



**TITLE IV-E FOSTER CARE AND ADOPTION ASSISTANCE
ELIGIBILITY DETERMINATION POLICY MANUAL**

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OVERVIEW OF TITLE IV-E

Title IV-E is an amendment to the Social Security Act established in 1980. This section of the act was legislated by the federal government to provide assistance to state child welfare agencies rendering services to children in need of care. Under Title IV-E, the federal government shares the cost in caring for financially deprived children who are placed in substitute care. Title IV-E reimbursement covers payments made for foster care (both voluntary placements and court-ordered placements), adoption subsidy, and administrative costs incurred in the process of placing and maintaining children in alternative, protective settings. Please note that the Department of Services for Children, Youth and Their Families (DSCYF) does not utilize voluntary placement removals.

The State of Delaware Department of Services for Children, Youth, and Their Families (DSCYF) is the designated single-state agency entitled to submit claims for Title IV-E reimbursement. As such, DSCYF is responsible for determining which children are eligible for Title IV-E reimbursement based on federal criteria and which costs meet the eligibility criteria for administering the IV-E program.

In January 2000, the federal government published a set of new rules and regulations with an effective date of March 27, 2000. The Administration for Children and Families (ACF) is the federal agency responsible for overseeing the Title IV-E program in Delaware. The new rules clarify the eligibility criteria for the determination of a child's eligibility and the procedural program requirements as outlined in the Delaware Title IV-E State Plan (most recently revised version was approved by ACF on 5/30/08). The criteria are outlined on the following pages.

DSCYF submits quarterly claims to the ACF for maintenance assistance (room and board costs of eligible children in licensed substitute care settings) and for the administration of the Title IV-E program. This information is submitted on the Title IV-E-1 claim.

The children determined by DSCYF to be eligible for Title IV-E maintenance assistance and the costs associated with the administering the Title IV-E program must be documented and retained in accordance with standard accounting and record management practices for audit purposes. The Statewide Automated Child Welfare Information System (SACWIS)/Family & Child Tracking System (FACTS) system has been used to document the costs associated with the foster care, adoption subsidy, and group care payments made on behalf of the children determined eligible under the Title IV-E Foster Care program.

PRIOR TO THE DSCYF DETERMINATION PROCESS

Overview

To begin the review, the Eligibility Workers must access the case record in FACTS. There are several ways in which the Client Eligibility Unit (CEU) receives a case for determination purposes.

Title IV-E Initial Determinations

There are two ways in which the Client Eligibility Unit (CEU) can identify a case for determination purposes. Title IV-E applications are required when a client is placed in the initial foster care setting of each placement episode. Division of Family Services (DFS) is responsible for completing Title IV-E applications for clients that are initially removed from the home by DFS and placed in a foster care setting. CEU is responsible for completing Title IV-E applications for clients that are initially removed from the home by Youth Rehabilitation Services (YRS) when the client is placed in a foster care setting. Title IV-E applications are only completed for clients that are in DSCYF custody and placed in a foster care placement which can be a paid or unpaid placement. There are two ways of identifying the need for Title IV-E initial determinations:

- *CEU Individual Worklist* – The determination is generated when the Title IV-E application is completed and finalized. FACTS requires the application initiator to assign the determination after completion.
- *CEU Review* – The CEU worker checks the CEU Review for new or modified placement events. The Placement Summary for each client that has a new or modified placement is reviewed for data quality and to determine if a Title IV-E application is required. The CEU worker contacts the DFS worker when the IV-E application has not been completed. The CEU worker completes the IV-E application for YRS clients. FACTS requires the application initiator to assign the determination after completion.

Title IV-E Redeterminations

FACTS generates Title IV-E redeterminations for all clients that are determined Title IV-E eligible. The first redetermination is system worklisted to the CEU worker that completed the Initial Title IV-E determination. The system will continue to worklist redeterminations to the last CEU worker that completed the previous Title IV-E event. There are five types of Title IV-E redeterminations:

- *Semi-Annual Review* – the first system generated redetermination.
- *Change Status* – any worklisted redetermination can be changed to a “Change Status” redetermination. Typically, Change Status is selected when a client that was residing in a non-paid placement has been replaced into a paid placement or vice versa. Another

instance is when a client is residing in a non-paid placement that becomes a paid placement. Change Status is not system generated.

- *Annual Review* – this redetermination is system generated. The date for the Annual Review is not changed by any other previous interim Redeterminations. The Permanency Hearing order is due by this date. The effective date on this Annual Review can be changed to the date of the Permanency Hearing Order if the hearing was held earlier.
- *Permanency Planning* – this redetermination type is selected when the Permanency Hearing Order was not timely or did not have the required language. This type is selected to restart FFP. This type of redetermination is not system generated.
- *Close* – this redetermination type is selected to end Title IV-E for the placement episode. This type of redetermination is not system generated.

INITIAL DETERMINATION OF TITLE IV-E FOSTER CARE ELIGIBILITY

VERIFY DEMOGRAPHIC INFORMATION

Overview

In order to be eligible under Title IV-E, a child must meet the following demographic requirements:

- Be a U.S. citizen or qualified alien
 - Citizenship may be established by verifying that the child, or their parents, were born in the U.S., or that the child is a naturalized citizen
 - A Qualified Alien who entered the U.S. on or after August 22, 1996 must have been residing in the U.S. for more than 5 years OR be placed with a qualified alien in order to be eligible.
- Be under the age of 18
- If 18 years of age, be enrolled in a full-time educational program, and expected to graduate before turning 19
 - An educational program must be a secondary school, or the equivalent level of vocational or technical training, such as high school, GED program, Job Corps

Step-by-Step Process

1. Verify U.S. citizenship
 - a. FACTS Personal Data
 - i. Place of Birth and citizenship is acceptable if verified by a “Super User” or a CEU member
 - ii. To locate data:
 1. Person Info>Client>Event List
 2. Click Person View, Person Data
 3. Open Citizenship Tab
 - b. EVRS*
 - i. Vital Statistics may be used to document DE citizenship, place of birth
 - ii. To locate data:
 1. Click Search
 2. Enter demographic information
 3. Check box by name of matching person, click Select Record(s)
 - c. DCIS2*
 - i. Family applications for benefits may be used to verify US citizenship, and citizenship of other states
 1. Citizenship verified by “Conversion” or by “Affidavit” are not acceptable
 - ii. To locate data:
 1. Subsystem>Application Entry

2. Function>Query>Individual Participation (or Individual Name Search)
3. Enter MCI (or Name info), click Retrieve
4. Highlight case, click Case
5. Function>Technical>Additional Demographics
6. Additional Demo-1 tab
- d. Requests to DFS (only if necessary)*
 - i. DFS workers may be contacted to request other information, such as birth certificates, certification of naturalization, or adoption decrees
- e. If child is not a U.S. citizen, the child may still be made eligible if they are a Qualified Alien who entered the U.S. on or after August 22, 1996 and has been residing in the U.S. for more than 5 years OR has been placed with a qualified alien; Qualified Alien statuses include:
 - i. Lawfully admitted Permanent Resident
 - ii. Asylee
 - iii. Refugee
 - iv. Alien paroled into the U.S. for at least one year
 - v. Alien whose deportation is being withheld
 - vi. Alien granted conditional entry to U.S.
- f. If child is verified as a U.S. citizen or as a Qualified Alien, proceed to Step 2
 - i. If child is not a U.S. citizen or a Qualified Alien, child is not Title IV-E eligible

**Information confirmed by other sources should be updated as verified in FACTS for future reference*

2. Verify Age/Identity of child
 - a. VacAttack
 - i. May be used to verify DOB as well as any aliases
 - ii. To locate data:
 1. Search by either Name, SSN or MCI
 2. Enter information, click Search
 3. Click on name of matching person
 - b. EVRS
 - i. Vital Statistics may be used to document DOB
 - ii. To locate data:
 1. Click Search
 2. Enter demographic information
 3. Check box by name of matching person, click Select Record(s)
 - c. If child is under 18 years old, proceed to Determine Prior Living
 - d. If child is 18 years old, verify that child is enrolled in a full-time educational program AND expected to graduate prior to 19th birthday
 - i. FACTS
 1. Verification may be found in case notes

2. To locate data:
 - a. Person Info>Client>Event List
 - b. Click Person View, Person Data
 - c. Open Education tab
- ii. DCIS2
 1. Verification may be found in case notes
 2. To locate data:
 - a. Subsystem>Application Entry
 - b. Function>Query>Individual Participation (or Individual Name Search)
 - c. Enter MCI (or Name info), click Retrieve
 - d. Support>Case Comments
 - e. Click Retrieve
- iii. Request Board Extension Letter from DFS
- iv. If child is enrolled and expected to graduate, proceed to Determine Prior Living
 1. If child is not enrolled and/or expected to graduate, child is not Title IV-E eligible

DETERMINE PRIOR LIVING

Overview

In order to be eligible under Title IV-E, a child must have been:

- Legally removed from the home of a specified relative
 - A specified relative is any person, related by blood, adoption, or marriage, up to the fifth degree of relation
 - A relative through marriage continues to be a relative, even in the case of divorce
- Living with said specified relative within 6 months of removal

**These are two distinct requirements. Removal from a specified relative involves establishing who the child was legally removed from, i.e., who had legal custody of the child at the time of the removal. Prior living refers to the verification that the child lived with the legal custodian within 6 months of the removal.*

Step-by-Step Process

1. Verify Removal Home (to assure reliability, this information should be established by one source and verified by another)
 - a. Initial Title IV-E Application
 - i. Notes entered by case worker may give indication of with whom the child was living at the time of the removal, as well as who else may have been living in the house
 - ii. To locate data:
 1. Person Info>Client>Event List
 2. Open Family Info tab
 - b. FACTS
 - i. Case worker notes in FACTS may contain information regarding the child's living situation at the time of the removal and/or who else may have been living in the home
 1. Progress Notes, Initial Interview, Case Conferences and Child Placement Plans are potential places to gather this information
 2. Search for information should begin with notes closest to the date of the removal
 - ii. To locate data:
 1. Support>Case Comments
 2. Click Retrieve
 3. Double-click on entries to read
 - c. DCIS2
 - i. If grants are open, household members in grant information may serve as verification of removal home

- ii. Verification may be found in case notes
 - iii. To locate data:
 - 1. Subsystem>Application Entry
 - 2. Function>Query>Individual Participation (or Individual Name Search)
 - 3. Enter MCI (or Name info), click Retrieve
 - 4. Support>Case Comments
 - 5. Click Retrieve
 - d. Court documents
 - i. The Initial Custody Order, or Ex Parte, may contain a narrative which includes the members of the home from which the child was removed (depending on the county of removal)
 - ii. This information may also be found in a subsequent Preliminary Protective Order
 - iii. To locate data:
 - 1. Person Info>Client>Custody History
 - 2. Highlight court date, click View
 - 3. Info>Event Doc Storage
 - e. Contact DFS case worker (only if necessary)
 - i. Worker may confirm/validate information or resolve any discrepancies
 - f. If child was legally removed from parent or specified relative, proceed to Step 2
 - i. If child was legally removed from non-relative guardian, child is not Title IV-E eligible
- 2. Confirm Prior Living within six months
 - a. Initial Title IV-E Application
 - i. Household members screen may list all people living in the home
 - ii. Notes entered by case worker may give indication of with whom the child was living at the time of the removal, or when the child had been living with the parent/specified relative
 - iii. To locate data:
 - 1. Person Info>Client>Event List
 - 2. Open Family Info tab
 - b. FACTS
 - i. Case worker notes in FACTS may contain information regarding the child's living situation at the time of the removal and/or prior to the removal
 - 1. Risk Assessment, Progress Notes, Initial Interview, Case Conferences and Child Placement Plans are potential places to gather this information
 - 2. Search for information should begin with notes closest to the date of the removal
 - ii. To locate data:
 - 1. Support>Case Comments
 - 2. Click Retrieve

3. Double-click on entries to read
- c. Court documents
 - i. The Initial Custody Order, or Ex Parte, may contain a narrative which indicates when the child had last lived with the parent/specified relative (depending on the county of removal)
 - ii. This information may also be found in a subsequent Preliminary Protective Order
 - iii. To locate data:
 1. Person Info>Client>Custody History
 2. Highlight court date, click View
 3. Info>Event Doc Storage
- d. Contact DFS case worker (only if necessary)
 - i. Worker may confirm/validate information or resolve any discrepancies
- e. If child was living in the household of same parent or specified relative within six months of removal, proceed to Establish Financial Deprivation
 - i. If child was not living in the household of same parent or specified relative within six months of removal, child is not Title IV-E eligible

Notes

- A constructive removal is one in which there is a legal removal from a parent/guardian, but no physical removal, as the child continues to live with an interim caretaker
 - For example, a child had been living with their biological mother until three months ago, when they moved in with a grandmother or neighbor, though the child's mother retained legal custody. When a custody petition is filed against the mother for neglect, the child will be legally removed from mom, but the child may be placed in the same home in which they were currently living (grandmother or neighbor). If this home is licensed as a foster family home, the child can be eligible for Title IV-E, since s/he lived with the parent/guardian within six months of the State's petition to the court, and was constructively removed from the parent/guardian (i.e., there was a paper removal of custody).
- A child born to a mother who was a hospital patient or a prison inmate would be considered to be living with the mother at the time of birth, and if placed in foster care would be removed from the home of the relative (the mother).
- If a child is hospitalized at the time of removal, the child would be considered to have been removed from the parent/guardian, so long as the parent/guardian maintained care and responsibility for the child.

ESTABLISH FINANCIAL DEPRIVATION

Overview

Title IV-E Eligibility was originally based upon eligibility for Aid to Families with Dependent Children (AFDC). The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) eliminated AFDC as a federal program. States are now mandated to do the following in order to meet the financial need requirement for Title IV-E eligibility:

The State must document that the child was financially needy and deprived of parental support at the time of the child's removal from home, using criteria in effect in its July 16, 1996, title IV-A State plan. Acceptable documentation supports the State's evaluation of financial need and deprivation by virtue of death of a parent, absence of a parent, mental or physical incapacity of a parent to the extent that the parent cannot support the needs of the child, or the unemployment of the principal wage earner.

Step-by-Step Process

1. Verify all members of the Federal Budget Unit (FBU), which includes:
 - a. Married couples if they live together and are both eligible for a grant
 - b. Unmarried couples who live together as husband and wife and are both eligible for a grant
 - c. Parents and their eligible children
2. Determine if any members are receiving SSI
 - a. DCIS2
 - i. Any household members receiving SSI are excluded from the FBU, and their income/assets are not counted in any calculations
 - ii. To locate data:
 1. Subsystem>Application Entry
 2. Function>Query>Individual Participation (or Individual Name Search)
 3. Enter MCI (or Name info), click Retrieve
3. Add all countable household assets
 - a. DCIS2
 - i. Resource and asset information such as bank accounts, cars, homes, etc.
 1. This information is collected as told by parent/specified relative, meaning that the information is only as accurate as the parent is truthful
 - ii. To locate data:
 1. Subsystem>Application Entry
 2. Function>Query>Individual Participation (or Individual Name Search)
 3. Enter MCI (or Name info), click Retrieve
 4. Support>Case Comments

5. Click Retrieve
- b. If the sum of all countable assets is less than \$10,000, continue to step 4
 - i. If the sum of all countable assets is greater than \$10,000, child is not Title IV-E eligible
4. Add all countable monthly income
 - a. Department of Labor (DOL)
 - i. This data includes wages as well as Unemployment Benefits
 - ii. DOL data should be requested for all FBU members over the age of 14
 - iii. Requested DOL data is populated to FACTS on a weekly basis
 - iv. DOL wage information is only used if it is consistent from quarter to quarter, or if employment is otherwise verified (for example, in DCIS2 Case Notes)
 - v. Wages are aggregated quarterly, so a monthly average should be applied as the wages for each individual
 1. For example, Quarterly Wages should be divided by 3 to show the average monthly wages
 - vi. To request data:
 1. Other>DOL Wage Request
 2. Enter PID, Name, SSN, MCI, click Save
 - vii. To view data (requests are processed every Friday)
 1. From main FACTS page, open Income Information tab
 2. Highlight person, click Show Wages
 - b. TheWorkNumber
 - i. If FBU member is, or has been, employed by a company registered with TheWorkNumber, their income will be reported on a paycheck-by-paycheck basis, with the Net Wages and Hours Worked for each period
 - ii. These wages should be aggregated to reflect monthly wages
 1. For example, if bi-weekly paychecks are shown, the monthly wages should reflect two paychecks
 - iii. To locate data:
 1. Enter SSN, click Continue
 2. Open each employer to see wage information (amounts, dates, etc)
 - c. DCIS2
 - i. Case Notes may indicate job status, etc., which may be used as a secondary verification
 - ii. To locate data:
 1. Subsystem>Application Entry
 2. Function>Query>Individual Participation (or Individual Name Search)
 3. Enter MCI (or Name info), click Retrieve
 4. Support>Case Comments
 5. Click Retrieve
 - d. DCIS1

- i. Child Support Data should be entered for each recipient in the FBU, if found in DCIS1
- ii. To locate data:
 1. Type 3, Enter
 2. Type 1, Enter
 3. Enter MCI or SSN, Enter
 4. Type C, Enter
 5. Enter line number to review, Enter
- e. Unearned Income
 - i. May be notated by case workers in FACTS, DCIS1 or DCIS2
 1. This information is collected as told by parent/specified relative, meaning that the information is only as accurate as the parent is truthful
- f. Lump Sum Payments
 - i. DCIS2
 1. Case Notes may indicate lump sum payment
 2. To locate data:
 - a. Subsystem>Application Entry
 - b. Function>Query>Individual Participation (or Individual Name Search)
 - c. Enter MCI (or Name info), click Retrieve
 - d. Support>Case Comments
 - e. Click Retrieve
 - ii. FACTS
 1. Functions>Resource>Lump Sum
- g. Once earned and unearned income for all FBU members has been verified and entered into FACTS, pressing “Calc Eligibility” will automatically tell the CEU worker whether the family passes or fails the Financial Needs Test
- h. If the Financial Needs Test is passed, proceed to Establish Parental Deprivation

Family Categorically Needy Monthly Income Limits

1 Person	\$201.00	5 Persons	\$476.00
2 Persons	\$270.00	6 Persons	\$545.00
3 Persons	\$338.00	7 Persons	\$614.00
4 Persons	\$407.00	8 Persons	\$741.00

Notes

- If the child was removed from either or both parents, the income and resources of all members of the household, including the subject child, are considered in the determination of financial need. (This means the income of the person, generally the

parent(s), who would have made the AFDC application and others dependent on that person living in that home.)

- If the child was removed from the home of a specified relative (other than the parent(s)), only the child's income and resources are considered in the determination of financial need.
- The following examples illustrate why the accurate reporting of income of all household members by the DFS staff is important.
 - A child, who has SSI income in the eligibility month, is removed from the parental home. SSI income is restricted to the child and is not considered part of the household income. Therefore, the child and the child's SSI income are removed from the family budget unit when calculating the family's AFDC eligibility. If the subject child has siblings also receiving SSI during the eligibility month, the siblings and their SSI income would also be removed from the family budget unit for AFDC eligibility purposes.
 - A child is removed from the parental home. The household includes the child's mother, the mother's boyfriend, and the child's two natural siblings. Both the mother and her boyfriend are employed, and the amount and source of monthly income are reported. However, because the mother's boyfriend has no relationship to the subject child (for AFDC eligibility purposes), the boyfriend is removed from all AFDC calculations.
 - The child's mother and her husband, who is the stepfather to the child, live in the child's removal home. Since the stepfather's income is deemed available based on AFDC rules, both the mother and the stepfather's income would be included in the AFDC calculation.
- The date the child enters foster care does not define the eligibility month for Title IV-E. It is the date of the filing of the petition, not the date of physical removal or placement, which defines the eligibility month. A petition is the formal legal document that initiates a legal proceeding, such as for finding a child to be dependent or delinquent.
- In the eligibility month, the removal home must be identified in order to determine if the child had AFDC relatedness
 - If the child is physically removed from one of the parent(s), then this home is assessed for AFDC
 - If the child lived with a parent or another specified relative for at least **one day** in the six months prior to the eligibility month, then that parent(s)' or specified relative's home becomes the removal home for the AFDC relatedness test
 - If the child is not physically removed from the home of another specified relative and the Department gains legal custody of the child by removing the legal custody from a parent, this is considered to be a **constructive removal** (paper removal). In this situation, the removal home is considered to be the parent's home.
 - If the child did not live with a parent(s) or another specified relative from whom legal custody was removed within the six months prior to the eligibility month, the child will **not** be Title IV-E eligible during this placement episode.
- The following individuals are considered specified relatives under the AFDC definition:

- Parent(s), which means birth or adoptive father or mother
- A stepfather or stepmother, grandfather, grandmother, brother, sister, stepbrother, stepsister, uncle, aunt, first cousin, first cousin once removed, nephew or niece
- Relationships include those of half-blood and may be persons of preceding generations denoted by prefixes of grand, great-grand, or great-great-grand, and include spouses of any persons named above even though the marriage has been terminated.
- A legal guardian of a child that does **not** meet one of the AFDC definitions listed above would **not** qualify as a specified relative.
- **INCOME** – In order to meet AFDC financial need, the total monthly net income of the child and/or family must be equal to or less than the AFDC Standard of Need that was in effect on July 16, 1996. Income includes the following:
 - Earned Income – wages, salaries, commissions, self-employment wages, and income from rent or board. Earned income of a child who is a full-time student is not counted
 - Unearned Income – money derived from sources other than by the rendering of a service, such as:
 - VA (Veterans Administration) Benefits
 - UC (Unemployment Compensation)
 - RSDI (Retirement, Survivors and Disability Insurance)
 - SSI (Supplemental Security Income)
 - Collected court-ordered support payments
 - Income from legally responsible relatives
 - Dividends or interest
 - Other pension benefits
- **DEDUCTIONS** – Certain items may also be deducted from a family's income when determining whether a family meets AFDC standards. The most common deduction is for dependent care expense (such as child or adult day care). In some instances, the amount of allowable deductions may allow a family, who would otherwise not qualify, to meet the AFDC income guidelines.
- **RESOURCES** – Non-exempt resources of the child and/or the family must not exceed \$10,000. The value of resources is the fair market value minus any loans, encumbrances, or money owed on the resource. Resources should be verified. Resources are personal property an items of value and include:
 - Cash
 - Checking and savings accounts
 - Savings bonds
 - Revocable burial reserves (*Note: up to \$1,500 per person is exempt*)
 - Stocks
 - Automobile (*Note: up to \$1,500 equity is excluded*)
 - Other motor vehicle or boat
 - Motor home
 - Cash surrender value of life insurance (*Note: the family member must be the owner of the policy in order to count the cash value*)

- Equity value of non-resident property
 - *Items that are **not** considered resources would include the primary residence, appliances, household furnishings, furniture, clothing, jewelry, equipment and tools used in a trade, and up to \$1,500 equity in a vehicle*
- **LUMP SUM PAYMENT** – A lump sum payment is a nonrecurring or advance payment not earmarked for a specific purpose. Examples of lump sum payments are retroactive Social Security benefits, stock dividends, life insurance settlements, etc. A lump sum payment under AFDC is considered as income (not as a resource) when received. When the lump sum payment is received, the child will be non-eligible for the number of full months for which the cost of care is equally divisible into the lump sum payment amount. For any partial remaining month, the remainder of the lump sum payment will be treated as income for that month. *Note: conversion of an existing resource into cash (e.g., cashing in savings bonds) is not a lump sum payment, the cash is considered a resource.*

ESTABLISH PARENTAL DEPRIVATION

Overview

In order to be eligible under Title IV-E, a dependent child must also be a needy child deprived of parental support or care by reason of:

- Physical or mental incapacity of parent
- Death of a parent
- Continued absence from the home by parent (also, un-established paternity)
- Unemployment of principal wage earner of household

Step-by-Step Process

1. Establish Parental Deprivation at the time of the Home Removal Episode
 - a. Physical or mental incapacity of one (or both) parent
 - i. DCIS2
 1. If a parent receives SSI, they can be considered incapacitated
 - ii. To locate data:
 1. Subsystem>Application Entry
 2. Function>Query>Individual Participation (or Individual Name Search)
 3. Enter MCI (or Name info), click Retrieve
 - b. Death of one (or both) parent
 - i. EVRS
 1. Vital statistics can verify the death of either parent
 - ii. To locate data:
 1. Click Search
 2. Enter demographic information
 3. Check box by name of matching person, click Select Record(s)
 - c. Absence of one (or both) parent
 - i. If one, or both, parent is not present, as established in Determining Prior Living, then they can be considered absent
 - d. Unemployment of principal wage earner of household
 - i. In a two parent household, the principal wage earner is the parent that has earned the greater amount of money in the two year period that immediately precedes the current month
 1. To qualify as an unemployed parent, the principal wage earner must meet ALL of the following:
 - a. Have been unemployed or underemployed for at least 30 days
 - b. Have not refused a bona fide offer of employment without good cause in the thirty day period prior to the determination

- c. Have not been disqualified for receipt of Unemployment Compensation
 - d. And one of the following:
 - i. Have earned at least \$50 in at least six of any 13 quarter period that ends within one year of the determination
 - ii. Participated in the First Step Program at least six of any 13 quarter period that ends within one year of the determination
 - iii. Have received or was qualified to receive unemployment compensation at any time during the 12 month period prior to the determination
- 2. Verify continuous Parental Deprivation throughout period of review
- 3. If Parental Deprivation exists at the time of removal, proceed to Verify Legal Determinations
 - a. If Parental Deprivation does not exist at the time of the removal, child is not Title IV-E eligible

Notes

- DEATH – Death of a parent establishes deprivation and it must be documented in the case record. The statement of the person providing the information is acceptable and further verification is not required.
- INCAPACITY - Any condition of the mind or body which substantially reduces or eliminates the ability of the parent to support or care for the child, and which has lasted or is expected to last at least 30 days. The incapacity should be verified, if possible. Verification consists of confirmation of the parent's receipt of SSI or Social Security benefits, or if these are not available, third party verification by a physician or clinic personnel, copies of reports, examinations, etc. Medical information should be obtained to support the findings of incapacity.
 - The "or care for the child" provision stated above allows for an assessment of the impact of the incapacity on the parent's child-rearing responsibilities. Within this definition, it is possible to determine a parent incapacitated for AFDC purposes even though the parent may be capable of full-time employment, which is significant for placement situations involving a two-parent household. There may be an underlying cause of abuse or neglect which can be the basis of the incapacity for AFDC purposes. The following examples illustrate incapacity as a deprivation factor.
 - Mr. and Mrs. Jones are capable of full-time employment, but Mr. Jones has chronic asthma. He cannot work in environments that would expose him to dust or fumes, or at jobs that require strenuous physical exertion. Since his illness is expected to last at least 30 days and it limits his employment opportunities, he can be found incapacitated for AFDC purposes.

- Mr. and Mrs. Smith are capable of full-time employment. Mrs. Smith has chronic depression and is an outpatient with the local mental health clinic. Because of the depression, she avoids many of the day-to-day responsibilities associated with rearing and nurturing her children, and has relied on relatives and neighbors for assistance. Although Mrs. Smith may be capable of full-time employment, she can be found incapacitated for AFDC purposes since her illness reduces her ability to care for her children.
 - Mr. and Mrs. Adams are capable of full-time employment. Mr. Adams is a heavy drinker and becomes abusive to his family several times each month when under the influence of alcohol. He has sporadic involvement with a local drug and alcohol clinic. Although he may be fully employable, Mr. Adams can be found incapacitated for AFDC purposes since his impairment affects his ability to care for his children.
- UNEMPLOYMENT – This only applies when both parents are present in the household. In a two-parent household, the parent who earned the greater amount of money in the 24-month period immediately preceding the eligibility month is considered the primary wage earner. If the primary wage earner meets either of the following definitions of unemployment, the deprivation factor is met:
 - Has a proven work record of at least six or more calendar quarters in any 13 calendar quarters ending within the 12-month period prior to the date of the AFDC application, and received Unemployment Compensation (UC) benefits within the 12- month period prior to the date of the AFDC application, or would have been eligible to receive UC benefits
 - All of the following conditions are met:
 - Has been unemployed for at least 30 days
 - Has not without good cause refused a bona fide offer of employment or training
 - Does not refuse to apply for or accept unemployment compensation
 - Is registered at the Job Service Office, unless exempt
 - Is not on strike
 - Is employed less than 100 hours per month
- ABSENCE – The absence of either parent deprives the child of parental care and support. The absence should be verified if possible. Verification consists of legal documents or third party verifications, such as relatives, neighbors, or newspaper accounts. The following are examples of parental absences:
 - Involuntary absences
 - Penal Incarceration – commitment of a parent to a penal institution for more than 30 days
 - Long Term Hospitalization or Other Institutionalization – hospitalization of a parent for more than 120 days
 - Deportation
 - Single-Parent Adoption – adoption papers confirm single parent adoption; this factor need only be documented one time

- Voluntary absences
 - Divorce, legal separation or marriage annulment
 - Desertion
 - Forced separation
 - Paternity not legally established (putative father)
 - Inability to determine parent's whereabouts
- Additionally, for purposes of Title XIX and XX, any child with respect to whom foster care maintenance payments are made will be deemed a dependent child as defined in section 406 of the Act (as so in effect 7/16/1996) and shall be deemed to be a recipient of aid to family with dependent children under Part A of this Title (as so in effect 7/16/1996). Title XIX and XX services will be available to such child in the State in which the child resides.

VERIFY LEGAL DETERMINATIONS

Overview

In order to be eligible for Title IV-E reimbursement, a Home Removal must be made pursuant to:

- A “Contrary to the Welfare” determination, made by the recognized authority granting custody (in court cases only), through a judicial determination to the effect that continuation in the home would be contrary to the child’s welfare, or that an emergency situation existed that prevented reasonable efforts from being made to reunite the child with his/her family
AND
- A “Reasonable Efforts” determination, made by the recognized authority granting custody (in court cases only), detailing that the agency made reasonable efforts to “maintain the family unit and prevent the unnecessary removal of a child from home”

Step-by-Step Process

1. FACTS
 - a. Custody History
 - i. CEU workers look here to identify court dates and scanned documents
 - ii. To locate data:
 1. Person Info>Client>Custody History
 2. Highlight court date, click View
 3. Info>Event Doc Storage
 - b. If documents are not scanned in FACTS, the CEU Supervisor collects a list of all legal document requests, which is provided directly to DFS Supervisors
 - i. These documents are then either scanned into FACTS, or faxed directly to CEU
2. Contrary To Welfare (Best Interests) Determination
 - a. Verify that Initial Custody Order (Ex Parte) contains a judicial determination that remaining in the home is “contrary to the welfare” of the child, or that placement into State custody in the “best interest of the child”
 - b. This determination must be contained in the first court order granting custody of the child to the state
3. Reasonable Efforts Determination
 - a. Verify that there is a judicial determination that “reasonable efforts” have been made to prevent the removal of the child from the home or that there was an imminent risk to the safety/wellbeing of the child which precluded such “reasonable efforts” from being made
 - b. This determination may be made in the Ex Parte, or in a subsequent Protective Hearing, provided that the determination is made within 60 days of the Ex Parte

4. If a valid Ex Parte contains a Contrary To Welfare determination AND a valid Reasonable Efforts determination is made within 60 days, proceed to Verify Foster Home Approval
 - a. If EITHER the Contrary To Welfare OR the Reasonable Efforts requirements are not met, the child is not Title IV-E eligible

Notes

- **By Delaware State policy, the Department does not accept Voluntary Placement agreements (VPA) for placement into foster care.** However, the following are the federal rules that relate to claiming Title IV-E for children placed in foster care by a VPA:
 - Title IV-E Eligibility
 - A child who enters foster care by a VPA signed by the parent(s) that authorizes the Department to place the child, meets the legal responsibility requirement of the Title IV-E eligibility factor.
 - A VPA is a signed written agreement between the Department and the parent(s) or the legal guardian(s) of the child, which is binding on all the parties and is a revocable agreement. It specifies the legal status of the child and the rights and obligations of the parent(s) or legal guardian(s) and the Department, while the child is in foster care.
 - A judicial determination of Contrary To Welfare/Best Interest (CTW/BI) or Reasonable Efforts (RE) to Prevent Placement is not required for the initial eligibility determination.
 - A voluntary relinquishment of parental rights does not constitute a VPA.
 - Eligibility Month in VP
 - The actual date the agreement was signed by both parties is the date that defines the eligibility month in the case of a VPA, even if the child does not enter care immediately.
 - Loss of Title IV-E Eligibility
 - The Department must get a judicial determination, within 180 days of the foster care placement, which states that the foster care placement is in the best interest of the child. If the Department does not get the judicial determination within the first 180 days of placement, the child is no longer eligible for Title IV-E starting on the 181st day and remains ineligible for the duration of the placement episode.
- For DFS cases, the CTW/BI must be in the Ex Parte order. For YRS cases, it must be in the Juvenile Bail/Detention Disposition order.
- In dependency cases, removal of the child is/was necessary to protect the child because:
 - The child is being neglected and is without proper care and supervision
 - There are reasonable grounds to believe that the child is in danger of imminent death or serious physical injury or is being sexually abused and that the parents or other persons exercising custodial control or supervision are unable or unwilling to protect the child

- There is no parent or guardian available to provide supervision and care for the child
- While the focus of delinquency orders is often on protecting the community from criminal acts, the CTW/BI finding must clearly indicate that the removal is necessary to meet the youth's needs. The following are examples of court order language that may be acceptable in delinquency cases:
 - The youth is in need of treatment, supervision, and rehabilitation
 - The youth is a threat to him/herself and a threat to the community, and placement is in his/her best interests
 - The youth is without proper care, custody or support and that immediate protective custody is necessary to prevent personal harm to the youth
 - The child will commit or attempt to commit other offenses injurious to him/herself or to the community before court disposition
 - The following statements from the Juvenile Bail/Detention Disposition court order language may also suffice:
 - Danger to Self/Others
 - Family Abuse
 - Drug/Alcohol Abuse
 - No Parental Control
 - Runaway History
 - Parent Refused Custody
 - Suicidal/Depression/Meds for _____
- Each time a child is removed from the home, a court order must be obtained that contains the required CTW/BI determination. This would also apply to a reunification that disrupts. A return to foster care after a trial home visit that lasts longer than 6 months is considered a new placement and requires the CTW/BI determinations unless a court order specified a trial home visit of longer than 6 months.
- Reasonable Efforts (RE) to Prevent Placement
 - Includes such pre-placement activities as providing family preservation services, counseling, or other in-home services to maintain the child at home. When these efforts fail and the child enters foster care, the RE to prevent placement criteria is met when the court makes that finding.
- RE to Prevent Placement Is Not Required
 - There are several situations known as aggravated circumstances, when reasonable efforts to prevent a placement are not required:
 - When a court determines that the parent has abused the child by abandoning the child; torture; chronic abuse; sexual abuse; or other abuse
 - If the parent has been convicted of murder or voluntary manslaughter of another child of the parent
 - If the parent has been convicted of aiding or abetting, attempting, conspiring or soliciting to commit such a murder or voluntary manslaughter
 - If the parent has been convicted of a felony assault resulting in injury to the child or another child of the parent

- The parental rights of a sibling of the child have been involuntarily terminated
- If the reasonable efforts and contrary to the welfare judicial determinations are not included as required in the court orders, a transcript of the court proceedings is the only other documentation accepted to verify that these required determinations have been made
- Neither affidavits nor nunc pro tunc orders will be accepted as verification documentation in support of reasonable efforts and contrary to the welfare judicial determinations
- Court orders that reference State law to substantiate judicial determinations are not acceptable, even if State law provides that a removal must be based on a judicial determination that remaining in the home would be contrary to the child's welfare or that removal can only be ordered after reasonable efforts have been made

VERIFY FOSTER HOME APPROVAL

Overview

In order for the costs of placement to be claimable for Title IV-E reimbursement, a child must be placed in an approved foster care home/facility.

Location of Data

Foster care approvals can be verified by using FACTS. DFS workers enter approval information and the checklist reads off of the approval information automatically. Any discrepancies noticed are addressed between the CEU and DFS workers and resolved.

Step-by-Step Process

1. FACTS
 - a. In Placement Summary, verify that child has been placed continuously in approved foster homes
 - i. To locate data:
 1. Person Info>Client>Placement>Placement Summary
 - b. DFS workers enter approval information into FACTS and the checklist automatically reads off of the approval information
 - i. Any discrepancies noticed are to be addressed between the CEU and DFS workers and resolved
 - c. If child is placed in an approved foster home, child is determined to be Title IV-E eligible
 - i. If child is placed in a non-approved foster home, the child is not Title IV-E eligible

Notes

- If a child is placed in a non-approved home or facility in the process of gaining approval, only the administrative costs of foster care may be claimed for reimbursement. This was a change stemming from the Deficit Reduction Act of 2005, signed by Pres. Bush on February 8th, 2006.
- For those children placed in non-approved-in-the-process-of-getting-approved foster home settings, the state can claim administrative reimbursement for a period of their average length of approvals or 1 year, whichever is shorter.
- For those children placed in non-approved-in-the-process-of-getting-approved child care facilities, the state can claim administrative reimbursement for a period not to exceed two months.
- Foster care maintenance payments made on behalf of a child placed in a foster family home or child care institution, which is the parent of a son or daughter in the same home

or institution, must include amounts which are necessary to cover costs incurred on behalf of the child's son or daughter. Said costs must be limited to funds expended on those items described in the definition of foster care maintenance payments.

- Title IV-E payments are only possible for a child whose placement and care in a foster family home or child care institution (as defined in section 472(c) of the Act) is the responsibility of either: (1) the State agency administering the approved State Title IV-E plan, or (2) any other public agency with whom the State agency administering or supervising the administration of the approved State Title IV-E plan has made an agreement which is still in effect

RE-DETERMINATION OF TITLE IV-E FOSTER CARE ELIGIBILITY

DEPRIVATION

Overview

In order to maintain Title IV-E eligibility, there must be continuous deprivation of parental support or care. Financial deprivation for the household of removal does not need to be reestablished while the child remains in care. For any periods where parental deprivation cannot be verified, the child must be made Not Eligible. As is the case for an initial determination, a child must be deprived of parental support or care by reason of:

- Death of a parent
- Continued absence from the home by parent (also un-established paternity)
- Physical or mental incapacity of parent
- Unemployment of principal wage earner of household

Lastly, the child must be financially deprived and eligible for AFDC as a household of one.

Location of Data

Information for this section may be found in FACTS in the following sections:

- DCIS 1 Vital Statistics – can prove death;
- DCIS 2 also can show SSI for proving incapacity;
- Initial Court Order (although unreliable at the writing of this manual);
- Initial Title IV-E Application;
- Child Support System;
- Birth Certificates;
- FACTS Investigation Case Notes;
- DE Department of Labor (DOL) request if the child is over the age of 14;
- Case and progress notes; and
- Contacting DFS Worker (only when necessary).

Step-by-Step Process

1. Was either parent living outside of the home, and therefore absent?
2. Is either parent deceased?
3. Is either parent receiving SSI? Can physical or mental incapacity be established in any other way?
4. Does the child meet AFDC standards as a household of one?
5. If “Yes” to any Step 1-3, and “Yes” to Step 4 proceed to next requirement

- a. If “No” to all Steps 1-4, child is not Title IV-E eligible. Child can be Title IV-E eligible if these requirements are met at a later date.

PERMANENCY HEARING (PH)

Overview

Title IV-E requires that “Reasonable Efforts” be made annually in the case of ongoing foster care cases. A “Reasonable Efforts” determination, made by the recognized authority continuing custody, details that the agency made reasonable efforts to either “make it possible for the child to return safely to his/her parent or guardian” or “place the child in a timely manner in accordance with the permanency plan of the child”. This is due 12 months from the day the child was removed from a foster care home, and at least once every 12 months thereafter while the child is in foster care.

Location of Data

- FACTS Custody History has legal dates and workers look here first to identify any scanned legal documents;
- Where documents are not in FACTS, the CEU Supervisor spearheads all legal requests and a list is provided directly to DFS supervisors. These are then scanned and put in FACTS and also faxed directly to the CEU worker.
- CEU Eligibility Worker then looks for correct Title IV-E language of RE in the PH.

Note: Where child has been TPR'd often times PHs, as of the writing of this manual, are consistently not held on time, if at all.

Step-by-Step Process

1. Has a Permanency Hearing been received by the CEU Eligibility Worker for review?
2. Is there a declaration by the judge in the PH that DFS has made “reasonable efforts to return the child home” or “reasonable efforts to finalize the permanency plan” of the child?
3. Is the court order dated?
4. Is the court order signed by a judge?
5. If “Yes” to all Step 1-4, proceed to next requirement
 - a. If “No” to any of Steps 1-4, child is not Title IV-E eligible. Child can be Title IV-E eligible if these requirements are met at a later date.

Notes

- If such a judicial determination regarding reasonable efforts to finalize a permanency plan is not made, the child becomes ineligible under Title IV-E from the end of the 12th month following the date the child is considered to have entered foster care or the end of

the 12th month following the _month in which the most recent judicial determination of reasonable efforts to finalize a permanency plan was made, and remains ineligible until such a judicial determination is made.

APPROVALS

Overview

In order for the costs of placement to be claimable for Title IV-E reimbursement, a child must be placed in an approved foster care home/facility.

Location of Data

Foster care licenses can be verified by using FACTS. DFS workers enter approval information and the checklist reads off of the approval information automatically. Any discrepancies noticed are addressed between the CEU and DFS workers and resolved.

Step-by-Step Process

1. Is the child living in an approved facility?
2. If “Yes” to Step 1, child is Title IV-E Eligible.
 - a. If “Not” to Step 1, child is not Title IV-E eligible. Child can be Title IV-E eligible if this requirement is met at a later date.

Notes

- If a child is placed in a non-approved home or facility in the process of gaining approval, only the administrative costs of foster care may be claimed for reimbursement. This was a change stemming from the Deficit Reduction Act of 2005, signed by Pres. Bush on February 8th, 2006.
- For those children placed in non-approved-in-the-process-of-getting-approved foster home settings, the state can claim administrative reimbursement for a period of their average length of approval or 1 year, whichever is shorter.
- For those children placed in non-approved-in-the-process-of-getting-approved child care facilities, the state can claim administrative reimbursement for a period not to exceed two month.
- Placements since the initial determination are reviewed at redetermination currently. Change of address reviews can be queried on an ad hoc basis from the CEU Review tab in FACTS. Any changes in approvals have their status changed by the CEU worker and claiming information passed along to the DSCYF Finance Office.

COMPLETING ELIGIBILITY (RE)DETERMINATION IN FACTS

Overview

As information is collected for each section of the eligibility (re)determination, it must be entered into FACTS so that the determination may be completed in the system.

Location of Data

Once a (re)determination is opened in FACTS, each tab contains different pieces of information needed to complete the (re)determination.

- Income/Resource
 - Verify the household members
 - Enter income information for each person in the FBU
- Budget Calculation
 - Verify that all income is properly entered, click “Calc Eligibility” button
- Determination
 - Complete check boxes for eligibility requirements (as determined by information gathered)
 - Click “Finalize” button to accept determination results

Notes

- A child will be considered to have entered foster care on the earlier of:
 - the date of the first judicial finding that the child has been subjected to child abuse or neglect; or
 - the date that is 60 days after the date on which the child is removed from the home.
- In order to account for changes in eligibility between determinations, new user-created determinations must be created. For example, if an Initial Determination is completed as Eligible, but there is a Non-Eligible period one month later (i.e., prior to 6-month Re-Determination), a new determination must be created on first day of Non-Eligible period and determined as Non-Eligible. Another determination must be created on first day status changes back to Eligible and determined as such.
- An email should be sent to Client Payments telling them to recode Non-Eligible periods (for any payment change)

TITLE IV-E ADOPTION ASSISTANCE ELIGIBILITY

Overview

The purpose of the adoption assistance provision of Title IV-E is to make financial and medical assistance available to adoptive parents or legal guardians to ensure that children whose parental rights have been terminated and with special needs who are difficult to place in adoptive homes will remain not in foster care for financial reasons alone. The Adoption Assistance and Child Welfare Act of 1980, as modified by the Adoption and Safe Families Act of 1997, provides federal financial participation for adoptions subsidies paid by the State. Federal reimbursement is available for special needs children who are eligible for AFDC (using the criteria in effect on July 16, 1996), Title IV-E maintenance, or the Supplemental Security Income (SSI) program. The State will provide health insurance coverage (through one or more State medical assistance programs), with the same type and kind of benefits as those which would be provided for children by the State under Title XIX, or a comparable State medical plan, for any child who has been determined to be a child with special needs, for whom there is in effect an adoption assistance agreement between the State and an adoptive parent or parents, and who the State has determined cannot be placed with an adoptive parent or parents without medical assistance due to special needs for medical, mental health or rehabilitative care. In the event that the State provides such coverage through a State medical assistance program other than the program under Title XIX, and the State exceeds its funding for services under such other program, any such child is deemed to be receiving aid or assistance under the State plan under this part for purposes of section 1902(a)(10)(a)(i)(1); and in determining cost-sharing requirements, the State will take into consideration the circumstances of the adopting parent or parents and the needs of the child being adopted to the extent coverage is provided through a State medical assistance program, consistent with the rules under such program.

Eligibility Criteria

There are eight eligibility criteria that must be present in order for a child to be considered eligible for Title IV-E Adoption Assistance. All of these are addressed in detail below:

1. The Child Must Be Free For Adoption.

A child is considered free for adoption if either of the following two criteria has been met:

1. A Termination of Parental Rights (TPR) court order has been granted under State law, or
2. A voluntary parental relinquishment of the child by the biological parent (s) has occurred. (Not used by DSCYF)

Note: In addition to a voluntary relinquishment there must be a judicial determination (made within 180 days of removal from the home of a specified relative) to the effect that continuation in the home would be "Contrary to the Welfare" of the child, even if a court sanctions that voluntary relinquishment. (Not relative to DSCYF-Delaware does not recognize voluntary relinquishments)

2. Legal Custody

The child must be in the legal custody of the Department or another public or private agency approved by the Department.

3. “Special Needs” Condition or Characteristic

The child must have “Special Needs” which are conditions or child characteristics that make it difficult to place a child for adoption without providing adoption assistance or Medical Assistance to prospective adoptive parents. There must be documentation that a child has at least one of the following, physical, mental, or emotional or handicapping characteristics:

- a) Eight(8) years of age or over
- b) Member of a minority race or ethnic culture
- c) Member of a sibling group to be adopted by the same family
- d) A diagnosed physical handicap or chronic disease requiring medical attention
- e) A mental or emotional condition requiring treatment

4. Adoption Assistance Agreement

There must be a valid adoption assistance agreement between the Department and the adoptive parent (s). The Adoption Assistance Agreement is a written agreement between the Department that has custody of the child and the prospective adoptive parents (and other relevant agencies, if any). The agreement must be signed and in effect at the time, or prior to the time, the court issues the final adoption decree. A signed copy of the agreement must be given to each party to the agreement. The agreement must specify the following:

- a) Duration of the agreement, which cannot have a blanket limitation to a date earlier than the child’s 18th birthday. In individual cases it may end before the 18th birthday. In certain situations the duration of the agreement can be extended to age 21, if the Department determines that the child has a mental or physical handicap which warrants the continuation of assistance to age twenty-one.
- b) The nature and amount of the assistance payments and other services to be provided, if any, where the payment amount may not exceed the maximum foster care maintenance payment the child received or would have received if the child had been in a foster home, and the payment schedule and commencement date;
- c) The circumstances that would cause a reduction in the amount paid or termination of the agreement;
- d) Information concerning additional services that may be available to the child;
- e) That the child is eligible for Medical Assistance and Title XX services;
- f) That the agreement will remain in effect regardless of the state in which the child resides;
- g) Contains provisions for the protection of the interests of the child in case the adoptive parents and child should move to another State while the agreement is in effect;
- h) That the adoptive parents are responsible for notifying the Department of changes in circumstances; and

- i) The specific services that will be provided by a private non-profit agency that is a party to the agreement (if applicable).

5. Reasonable, But Unsuccessful, Efforts to Place Without Assistance

The Department must have made reasonable efforts to place the child without adoption assistance. Evidence of this effort must be documented in the child's record.

This requirement is met if there is a specific recruited adoptive family's declaration that they cannot adopt a specific child without assistance, after the agency has determined that the family is the most suitable for the child.

This requirement is also met if it can be shown that such a placement effort would not be in the best interests of the child because of the existence of significant emotional ties with foster parents who want to adopt the child and the emotional ties occurred while the child was in placement with these foster parents.

6. Needy Child

The child must have a financial need at the time that adoption proceedings were initiated (this refers to the month in which the adoption petition was filed). This means that the child must be receiving or eligible to receive SSI, or Title IV-E Placement Maintenance, or meet the AFDC eligibility criteria in effect on July 16, 1996.

If a child does not meet any of these criteria in the month in which the adoption petition was filed, then it must be shown that the child had "relatedness: to the AFDC Program in the month of the child's initial removal from the home into foster care. (AFDC relatedness is determined by making a hypothetical determination, just as it is in Title IV-E maintenance eligibility determinations).

The following are six ways in which a child can meet the categorical eligibility requirement for Title IV-E Adoption Assistance:

1. SSI Eligible - In the month in which the adoption petition was filed the child was eligible to receive SSI benefits.
2. Title IV-E Foster Care Eligible - In the month in which the adoption petition was filed the child was eligible for Title IV-E Maintenance.
3. Child of a Minor Parent Receiving Title IV-E Foster Care Payments – In the month in which the adoption petition was filed the child was in placement with his or her minor parent and the minor parent was receiving Title IV-E Maintenance.
4. Disrupted Title IV-E Adoption Assistance Case – A Title IV-E adoption assistance eligible child whose adoption is subsequently dissolved and the parental rights of the adoptive parents have been terminated or the adoptive parents have died, will continue to be Title IV-E adoption assistance eligible when adopted again.

Note: This applies only to children adopted on or after October 1, 1997.

5. The Child was living With a Specified Relative – In the month in which the adoption petition was filed the child was living with a specified relative and the child would have met the AFDC eligibility criteria in place on July 16, 1996.
6. The Child “would have been eligible” for AFDC when first removed from their home into foster care – If “1” through “5” above do not apply, then in the month of the child’s initial removal from their home, the child would have met the AFDC eligibility criteria in place on July 16, 1996. Also, the child had been living with a relative specified in section 406(a) of the Act within six months before the month in which a voluntary placement agreement was entered into or court proceedings leading to the judicial determination referred to in section 473(a)(2)(A)(i), were initiated and would have received AFDC in that relative’s home under the State plan approved under section 402 of the Act for that month, if in that month the child had been living with such relative and application had been made. Lastly, the child is determined eligible for adoption assistance payments under 473 of the Act with respect to a prior adoption and/or fails to meet the requirements of section 473(a)(2)(A)(i) but will meet such requirements if the child is treated as if the child is in the same financial and other circumstances the child was in the last time the child was determined eligible for adoption assistance payments under section 473 of the Act and the prior adoption is treated as never having occurred. Please note DSCYF does not remove children through Voluntary Placement Agreements (VPAs).

7. Age

The child must be under the age of eighteen (18) to be eligible for Title IV-E adoption assistance or under age twenty-one (21), if the Department determines that the child has a mental or physical handicap which warrants the continuation of assistance to age twenty-one.

8. Citizenship

The child must be a citizen of the United States by birth or naturalization or meet the definition of a “qualified alien” under federal law to apply for or receive Title IV-E adoption assistance.

Note: There is no citizenship requirement for Federal adoption assistance agreements signed before August 22, 1996.

A child who is a qualified alien that entered the United States on or after August 22, 1996, is subject to a five year-year residency requirement before becoming eligible for Title IV-E benefits, except under two conditions:

1. The child is placed with an adoptive parent who is a citizen or qualified alien, or
2. The child is one of the following excepted groups: refugees, asylees, aliens whose deportation is withheld, Cuban/Haitian entrants or Ameri-Asians from Vietnam.

The citizen or immigrant status of a child applying for Title IV-E benefits must be verified:

1. For children born in the United States citizenship status is verified by the child’s birth certificate.
2. If the child was born in another country and later became a naturalized U.S. citizen, citizenship papers will serve as verification.

3. For non-citizens, “qualified alien” status can be verified by other Immigration and Naturalization Service documents, such as those granting permanent residency (I-94, Alien Registration Card) or refugee status. The local Department of Justice, Immigration and Naturalization Services can be contacted in the event of questions or difficulties.

It is also necessary to verify the citizenship or alien status of the potential adoptive parent when placing a qualified alien child who entered the United States on or after August 22, 1996, and has been in the U.S. less than five years. As noted above, if the adoptive parent is not a citizen or “qualified alien”, the child is not exempt from the five-year residency requirement and would not be eligible for Title IV-E benefits.

DSCYF STAFF QUESTIONS/ANSWERS

Q: A child is not eligible for Title IV-E foster Care maintenance payments because there was no judicial determination of Reasonable Efforts to Prevent Placement within 60 days of their removal. Would the same child be eligible for Title IV-E Adoption Assistance FFP if all other requirements were met?

A: The Reasonable Efforts requirement does not apply to Title IV-E Adoption Assistance eligibility, so if all other requirements of AA are met, then yes, the child would be eligible. When a TPR is obtained, is basically determining that all efforts have been made or none were possible to safely return the child and the child is available for adoption.

Q: A child is not eligible for Title IV-E foster Care maintenance payments because there was no judicial determination of Reasonable Efforts to Reunify or Reasonable Efforts to Finalize an Alternative Permanency Plan. Would the same child be eligible for Title IV-E Adoption Assistance FFP if all other requirements were met?

A: The Reasonable Efforts requirement does not apply to Title IV-E Adoption Assistance eligibility, so if all other requirements of AA are met, then yes, the child would be eligible.

Q: If a child's foster home remains open while the child is placed in a facility outside the scope of foster care, such as a detention facility or psychiatric hospital/facility, can we continue to claim FFP for the foster care placement, or do we stop claiming at the end of the month and then start claiming again when the child returns to foster care placement? Or can we continue to claim FFP for the foster care placement or stop claiming the day the child is placed in a detention facility?

A: The foster care placement may be treated as continuous if the original court order pertaining to the child's removal from the home is still in effect. Upon the child's return to the foster care placement, the child's need and deprivation must be verified to continue claiming.

If the State chooses, the placement in a facility outside the scope of foster care (such as a detention center) may be treated as a discharge from foster care. In this case, the child's Title IV-E eligibility (including judicial determinations) must be re-established upon the return to foster care.

In either case, no FFP may be claimed while the child is placed in a facility outside the scope of foster care. If the foster care placement is treated as continuous, the child must be made not-eligible for the duration of the time they are placed in the non-eligible placement.

Q: When a child has been in a foster home and is then temporarily placed with the parent with the intent to return the child to a different foster home, can this be viewed the same as a "trial home visit"? Is there a time limit for the temporary home visit when we would close IV-E and start an Initial Determination if the child was placed in foster care again?

A: Although states have leniency in determining what defines a trial home visit, any stay longer than 6 months must be the result of a court order. Without a court order, Title IV-E eligibility should be ended after a 6 month stay. Any subsequent placement would require a new

Initial Determination, including new judicial determinations of Contrary To Welfare and Reasonable Efforts.

Q: It is my understanding that we can only claim FFP up to 2 weeks when a child is AWOL or runaway but only if the child returns to the same foster home. Is this correct? Would the child be considered Not-Eligible after 2 weeks? Can we redetermine the child is Title IV-E eligible and claim FFP when the child is placed back in a different foster home (within 6 months)?

A: Only administrative costs are allowable when a child has run away from a foster care placement. If the State retains placement and care responsibility for a child who has run away from a foster care placement, the State must continue to perform Title IV-E activities on behalf of such a child, including holding six-month reviews and permanency hearings. There is no time limit on how long administrative costs may be claimed, so long as the State retains placement and care responsibility and continues to perform six-month reviews and permanency hearings.

Q: A child remains open in a foster care placement and the child is placed in a hospital (or runs away, or goes home for a weekend visit). Can we claim FFP for the foster care placement while the child is in the hospital? When the child returns to a foster care placement (even if the placement is different)? If the child returns home upon discharge?

A: The State may provide a full month's Title IV-E foster care maintenance payment to the licensed provider if the brief absence does not exceed 14 days and the child's placement continues with the same provider. Otherwise, the State must prorate its claim if the child is absent for more than 14 days.

If the child is not returning to the same placement, then only administrative costs may be claimed for the period while the child is hospitalized.

Q: Does a child have to be a resident of DE in order to meet the 07/16/1996 AFDC criteria? If no, do we use the 07/16/1996 DE AFDC standard or the standard of the state in which the child resides? Our State Plan states that a person must be a resident of the state to receive benefits.

A: Per DSSM 3010, applicants must reside in DE to be eligible for benefits. In light of this, children who are not residents of the state would not pass the AFDC relatedness requirement for AFDC eligibility. It is also less likely that you will have access to income/asset information for persons who are a resident of another state.

Q: Does the 6 months rule of living with a specified relative (AFDC relatedness) apply when the child is in the custody of the parent or a relative while the child has been in an inpatient psychiatric treatment facility for over 6 months and sometime after 6 months the Department obtains custody and places the child in a foster care placement?

A: If, while the child is a resident of an inpatient psychiatric facility (or hospital, boarding school, detention center, etc.), the parent or relative maintains care and placement responsibility for the child, then the 6 month requirement is considered to be met.

Q: Same scenario as above, except that the parent or relative guardian moves out of state while the child is in the facility. How can we determine AFDC relatedness for an out-of-state removal home?

A: Per DSSM 3010, applicants must reside in DE to be eligible for benefits. In light of this, children who are not residents of the state would not pass the AFDC relatedness requirement for AFDC eligibility. It is also less likely that you will have access to income/asset information for persons who are a resident of another state.

Q: When a child is in the same placement as their minor mother, are their Title IV-E eligibilities determined separately?

A: The Social Security Act requires that foster care maintenance payments for a minor parent in foster care cover a child of such parent if the child is placed with the minor parent. This applies to situations where the State only has custody (placement and care responsibility) for the minor mother.

If the State has custody of both the minor mother and the child, then their Title IV-E eligibility would have to be determined for each separately.

If the child is only placed with the minor parent, but the minor parent retains custody, then foster care payments made on behalf of the minor parent must include amounts which are necessary to cover costs incurred on behalf of the child's son or daughter. Said costs must be limited to funds expended on those items described in the definition of foster care maintenance payments.

Q: Who is the child removed from when a child is residing with a relative who is the legal guardian and both the parents and the relative guardian are on the court order?

A: The "living with" and "removed from" requirements must be based on the same parent/relative's home, and AFDC eligibility is based on that home.

From the Final Rule: "the statute did not contemplate the 'living with' and 'removal from' requirement would be satisfied by two discrete individuals. When the home from which the child is removed is not specifically identified in the judicial order or petition for removal, the foster care eligibility determination examines whether AFDC eligibility is based on the home of the individual that the State's law prescribes as the part from whom the child must be legally removed in order for the child to be under the placement and care of the State agency. Typically, this is the home of the individual who is the subject of the 'Contrary To Welfare' judicial determination."

Q: Who is the child removed from when a relative has legal custody of a child, but the child is living with a parent when the Department obtains custody and places the child in a foster care placement?

A: If no guardian is named in the court order sanctioning removal, the legal removal should be considered to be from the relative who had legal custody of the child at the time of the removal.

Q: Who is the child removed from when the parents are listed on the court order, but a relative had legal custody of the child? There is no mention of the relative in the court order.

A: The child should be considered to be removed from the parent/relative against whom the court order sanctioning removal is filed against.

Q: The Department obtains custody in April. The child runs away before they can be placed. Hearings continue to be held and the child's runaway status is acknowledged in the order. Child is finally found after 7 months and is placed in a foster care placement. When can this child be determined Title IV-E eligible if the child met all criteria in the month the petition was initiated (April)?

A: If all Title IV-E requirements, including legal documentation and AFDC eligibility, were met in the month of the petition filing, then the child should be made eligible at that time. Since the child would not be in a placement while AWOL, there would be no eligible maintenance costs for that time period, but administrative costs would be claimable, as long as the State continued to perform Title IV-E activities on behalf of such a child, including holding six-month periodic reviews and permanency hearings.

Q: When a child is on a temporary home visit or trial reunification, can Admin FFP be claimed? Must the child be returned to the same foster home to claim Admin FFP?

A: As long as the court order sanctioning placement remains in effect, administrative costs may be claimed for a trial home visit of up to 6 months, regardless if the visit ends with the child returning to placement or reunification.

Q: Is the child considered to be deprived when the child is on a temporary home visit or trial reunification?

A: A trial home visit or trial reunification does not have any bearing on the deprivation of the child. If an ongoing deprivation factor exists, then the child is considered to be deprived.

Q: Paternity testing results are confirmation, and at that point, paternity is clear, but what happens when a father is listed on the birth record and both the mother and the father state that he is not the father? What do we do when a court order states that mother and father, or just the father, are requesting paternity testing?

A: At the time of the application, if the father is in the home, but paternity has not been legally established, the father must acknowledge paternity as a condition of eligibility, and the process to legally establish paternity must be initiated. By the time of the first redetermination of eligibility the paternity test must have been processed, and a birth certificate with the father's name have been issued.

In situations where paternity has never been established and both parents are not available to legally acknowledge paternity, the relationship may be verified by a Family Court custody document that identifies the father.

Q: Please explain the effects on a child's eligibility for title IV-E adoption assistance when the adoptive parents die or the adoption is dissolved.

A: When an adoptive parent dies, or the adoption is otherwise disrupted or dissolved, the eligibility for Title IV-E Adoption Assistance is terminated. The child would be, however, eligible for AA in a subsequent adoption. The only determination that must be made by the State prior to the finalization of the subsequent adoption is whether the child is a child with special needs.

APPENDIX A: GLOSSARY OF TERMS

AFDC – Aid to Families with Dependent Children; the income maintenance program provided under Title IV-A of the Social Security Act. AFDC is a federally funded, categorical, “welfare” needs based program designed to assist dependent children by meeting the needs of their caretaker relatives. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) replaced AFDC with block grants for states to provide time-limited cash assistance for needy families or TANF (Temporary Assistance for Needy Families). A child’s linkage to AFDC, using the July 16, 1996 need standard, is a criteria of Title IV-E eligibility.

Affidavit – A written declaration made under oath before a notary public or other authorized official. For Title IV-E purposes, this documentation provided by the caseworker or investigator, is a statement to the court of the events in the home leading up to the request for custody of a particular child/sibling group and subsequent removal from the home.

Child Care Institution – A private child care institution, or a public child care institution which accommodates no more than 25 children, and is licensed by the State in which it is situated or has been approved by the agency of such State or tribal licensing authority (with respect to child care institutions on or near Indian reservations) responsible for licensing or approval of institutions of this type as meeting the standards established for such licensing. This definition must not include detention facilities, forestry camps, training schools, or any other facility operated primarily for the detention of children who are determined to be delinquent.

Contrary To Welfare – A judicial determination that continued placement in the home is contrary to the welfare (or best interests) of the child. This language must be incorporated into a the first court order granting custody of a child to the state agency in order for the child to be considered for Title IV-E eligibility.

Constructive Removal – The child lived with either a related or non-related interim caretaker for less than six months prior to the State's petition to the court for removal of the child. The State licenses the home as a foster family home and the child continues to reside in that home in foster care. The child is eligible for title IV-E foster care since s/he lived with the parent or relative guardian within six months of the State's petition to the court, and was constructively removed from the parent/guardian (i.e., there was a paper removal of custody).

Custody – DSCYF does not maintain custody of a child and the right to place a child in a protective setting through a Voluntary Placement Agreement (VP) DSCYF uses only court ordered custody. A child cannot be Title IV-E eligible if s/he is placed in substitute care without a court order.

A Voluntary Placement Agreement is a binding agreement between a state and the child’s parent(s)/guardian(s) for temporary placement. For Title IV-E purposes, VP cases can only be claimed for the first 180 days of placement, but this is not relative to current practices within DSCYF.

Court ordered custody is obtained through various court proceedings. A court order granting DSCYF temporary custody or “discretion to place” does not necessarily meet Title IV-E requirements. Title IV-E regulations state that the court must verify that DSCYF has made “reasonable efforts to maintain the child in his/her home” and that continued maintenance in the home is “contrary to the welfare” of the child. Court ordered custody can only be dismissed through a court of law.

Deprivation (Financial) - Deprivation of financial support must be determined by reviewing all raw financial data and applying it to the eligibility standards and criteria of AFDC as they existed on July 15, 1996.

Deprivation (Parental) – Children are deprived of parental care and support if one parent is deceased, mentally or physically incapacitated, continually absent from the home, or if the parent who is the principal wage earner is unemployed. Deprivation is determined only in relation to a child’s birth or adoptive parent(s). A discussion of each deprivation factor follows:

- **Death** – The death of a parent constitutes deprivation. The death must be verified and the possibility of Social Security benefits for the child and surviving parent must be investigated.
- **Physical or Mental Incapacity** – Deprivation based on the incapacity of a parent exists when one parent has a mental or physical impairment that substantially reduces or eliminates the parent’s ability to support or care for the child. The impairment must be expected to last at least thirty (30) days from its onset and must be verified by a statement from a physician or other competent medical professional.
 - In making the determination of the parent’s ability to support the child, DSCYF will take into account limited employment opportunities of handicapped individuals (e.g. persons accepted for service by the Division of Vocational Rehabilitation).
 - A parent who is a recipient of SSA or SSI payments based on blindness or disability qualifies as an incapacitated parent.
 - When eligibility for AFDC is based on parental incapacity and the incapacity ends, the case will remain eligible for a period not to exceed 90 days unless the parent returns to employment or assumes usual child care and housekeeping responsibilities.
- **Continued Absence** – Deprivation based on continued absence exists when a parent is out of the home and does not provide for the child’s support or care. Absence may occur for any reason, but is usually a result of divorce, separation, desertion or incarceration.
 - *Divorce* – the legal severance of marital ties.
 - *Desertion* – the abandonment of all responsibility for care and support of the child.
 - *Separation* – exists when a parent is out of the home but maintains some parental responsibilities.
 - *Incarceration* – confinement by court action in a prison or jail. A parent who is a convicted offender, but lives at home while serving a court imposed sentence by performing community service or public work is considered absent. For a period

not to exceed 90 days, an AFDC case may remain eligible based on the incarceration of a parent when the parent is released and returns to the home, unless the parent returns to work. The returning parent may receive assistance if he/she completes an application form and is otherwise eligible for a category of assistance.

- The parent's continued absence from the home and the nature of the absence must be verified at application and at each subsequent redetermination.
- A parent who is absent only because of requirements of active duty in the uniformed services of the U.S., or is absent because he/she is seeking work elsewhere is not considered absent for purposes of establishing AFDC eligibility.
- **Unemployed Parent** – Deprivation based on the unemployment of a parent exists when the parent who is the principal wage earner is unemployed or underemployed and meets the conditions listed below. The principal wage earner is the parent in a home where both parents reside that has earned the greater amount of money in the two (2) year period that immediately precedes the month that the application for AFDC is filed. A parent is underemployed if he/she is usually employed less than 100 hours in a given month. The fact that a parent works more than 100 hours in a given month does not exclude him/her from consideration for AFDC if the excess is of a temporary nature as evidenced by the fact that the parent was under the 100 hour standard for the prior two (2) months and expects to be under the standard during the next month. To qualify as an unemployed parent the principal wage earner must :
 - Be unemployed or underemployed for at least 30 days
 - Not have refused a bona fide offer of employment
 - Not be disqualified for Unemployment Compensation
 - AND
 - Have worked in at least six (6) quarters of any 13 calendar quarter period that ends within one year of the application filing data
 - OR have received or was qualified to receive Unemployment Compensation in the year preceding the application of filing date

Earned Income – Income derived directly from work related activity (e.g., wages).

(Title IV-E) Eligibility – Refers to the criteria for determining initial eligibility for Title IV-E funding when a child enters out-of-home care.

Eligibility Month – The month in which court action was initiated (i.e., a petition was filed) that led to the court ordered removal of the child from his or her home, or the month in which the Voluntary Placement Agreement was signed.

FFP – Federal Financial Participation; the matching rate paid by the federal government for specified program activities, as provided in federal regulation.

FMAP – Federal Medical Assistance Percentage; the FFP rate paid by the federal government for maintenance costs under Title IV-E and direct service costs under Title XIX. The rate is

based on the average wage per person in each state and ranges from 50% to 83%, and is calculated annually for each federal fiscal year.

Foster Care – An alternative living arrangement from those of the legal parents or guardian of the child. A foster parent must be approved by the Department as meeting certain standards and may be a relative or may be unrelated to the child.

Foster Care Maintenance Payments – May cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to the child, and reasonable travel to the child's home for visitation with family, or other caretakers. Local travel associated with providing the items listed above is also an allowable expense. In the case of child care institutions, such term must include the reasonable costs of administration and operation of such institutions as are necessarily required to provide the items described in the preceding sentences.

Foster Family Home – The home of an individual or family licensed or approved as meeting the standards established by the State licensing or approval authority(ies) (or with respect to foster family homes on or near Indian reservations, by the tribal licensing or approval authority(ies)), that provides 24-hour out-of-home care for children. The term may include group homes, agency-operated boarding homes or other facilities licensed or approved for the purpose of providing foster care by the State agency responsible for approval or licensing of such facilities. Foster family homes that are approved must be held to the same standards as foster family homes that are licensed. Anything less than full licensure or approval is insufficient for meeting Title IV-E eligibility requirements.

Medicaid and Social Services – For the purposes of Titles XIX and XX, any eligible child for whom there is an adoption assistance agreement in effect under section 473(a)(2) (whether or not adoption assistance payments are being made) is deemed to be a dependent child as defined in 406 of the Act and is deemed to be a recipient of AFDC under part A of Title IV of the Act (as in effect 7/16/96) in the State in which such child resides. Any child of such eligible child will be eligible for such services.

Non-Removal – In order for a case to be deemed Title IV-E eligible, removal from the home must occur, and the child must be placed into an approved substitute care setting. Non-removal occurs when the child is in the custody of DSCYF, yet remains in the care of the parent/guardian from whom s/he has been removed. Non-removal cases cannot be determined for Title IV-E funding.

Permanency Hearing – Court proceeding at which “reasonable efforts to finalize a permanency plan” are made. The goal of a permanency plan can be reunification or some other care arrangement (independent living, long-term foster care, adoption).

Petition – Formal written application to a court requesting judicial action on a certain matter; initiates legal proceedings. Must plainly state such facts as would bring the child within the jurisdiction of the court and what action is requested from the court.

Placement Maintenance – Funds for children in foster care/substitute care who meet the requirements of federal Title IV-E.

Prior Living – The person with whom the child was residing prior to removal and placement. In order for the case to be considered Title IV-E eligible, prior living must have been with a specified relative at some point within six (6) months of placement.

Qualified Alien – An individual residing in the U.S. who does not have citizenship but meets the “qualified alien” definition under federal law; includes, but is not limited to, an alien lawfully admitted for permanent residency, granted asylum or refugee status; a Cuban or Haitian entrant; or an alien who (or whose child or parent) has been battered or subjected to extreme cruelty in the U.S.. Undocumented aliens and aliens legally admitted to the U.S. on a temporary basis for work, study or pleasure are not qualified aliens. Only qualified aliens can apply for or receive Federal public benefits, including Title IV-E.

Reasonable Efforts – A judicial determination that efforts were made to maintain the child in the home prior to placement and that efforts continue to be made toward the finalization of a Permanency Plan.

Removal Home – The home from which the child is physically or constructively removed. It is the home where the daily supervision and care of the child is maintained or was intended to be maintained. In a constructive removal where there is not a physical removal of the child, the “removal home” is the person from whom the legal custody of the child was removed. Identification of the removal home is important in ascertaining whether family financial information, or only the child’s is used in the AFDC relatedness test for Title IV-E eligibility, and it is the circumstances in this home that are considered when the deprivation factor is reviewed.

Resources – Personal property or items of value, such as checking or savings accounts, automobiles, land, buildings, life insurance, etc., used in determining financial eligibility for AFDC.

Specified Relative – The following individuals are considered specified relatives under the AFDC definition:

- Parent(s), which means birth or adoptive father or mother
- A stepfather or stepmother, grandfather, grandmother, brother, sister, stepbrother, stepsister, uncle, aunt, first cousin, first cousin once removed, nephew or niece
- Relationships include those of half-blood and may be persons of preceding generations denoted by prefixes of grand, great-grand, or great-great-grand, and include spouses of any persons named above even though the marriage has been terminated.

- A legal guardian of a child that does not meet one of the AFDC definitions listed above would not qualify as a specified relative.

SSI – Supplemental Security Income; Children with special needs or a disability are often recipients of SSI benefits. A child receiving SSI benefits may be considered eligible for Title IV-E; however, the cost of care may not be claimed under both federal programs. Parents often receive SSI benefits due to incapacity/disability. Other forms of SSA payments (such as RSDI) are counted as income when determining AFDC eligibility.

TANF – Temporary Assistance to Needy Families; the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) replaced AFDC with block grants for states to provide time-limited cash assistance for needy families.

Title IV-E – Child welfare services entitlement program established in 1980 by the federal government under the Social Security Act. This program assists states in the funding of certain services rendered in the protection of children. The federal government will reimburse states for payments incurred in the process of placing at-risk children into protective settings.

Title XIX – Medical Assistance, MA, also known as Medicaid; the federal-state program that provides health care for low income and disabled individuals. Children receiving Title IV-E benefits or SSI are automatically eligible for Title XIX benefits.

Voluntary Placement Agreement – (*Not recognized in Delaware*) An agreement entered into by the parent/guardian of a minor child and a State Agency for the temporary placement of the minor. This agreement is binding for a 12 month period. The agreement may be revoked through a written consent of the parent/guardian. DSCYF does not remove children through a VPA.

For Title IV-E purposes, Voluntary Placement cases can only be claimed for 180 days of placement unless a judicial determination is made, prior to the 181st day, which states that continuation in foster care is in the child's best interest. The court may issue a court ordered voluntary which is considered to be legal custody.

APPENDIX B: REGULATORY REFERENCES

DEMOGRAPHIC INFORMATION

CFR TITLE 45 Sec. 233.10

(b) Federal financial participation.

(1) The provisions which govern Federal financial participation in assistance payments are set forth in the Social Security Act, throughout this chapter, and in other policy issuances of the Secretary. Where indicated, State plan provisions are prerequisite to Federal financial participation with respect to the applicable group and payments. State plan provisions on need, the amount of assistance, and eligibility determine the limits of Federal financial participation. Federal financial participation is excluded from assistance payments in which the State refuses to participate because of the failure of a local authority to apply such State plan provisions.

(2) The following is a summary statement regarding the groups for whom Federal financial participation is available. (More detailed information is given elsewhere.)

(i) OAA—for needy individuals under the plan who are 65 years of age or older. (ii) AFDC—for:

(a) Needy children under the plan who are:

(1) Under the age of 18, or age 18 if a full-time student in a secondary school, or in the equivalent level of vocational or technical training, and reasonably expected to complete the program before reaching age 19;

FINANCIAL DEPRIVATION

SSA TITLE IV PART E SEC. 472. [42 U.S.C. 672]

(a) IN GENERAL.—

(3) AFDC ELIGIBILITY REQUIREMENT.—

(A) IN GENERAL.—A child in the home referred to in paragraph (1) would have met the AFDC eligibility requirement of this paragraph if the child—

(i) would have received aid under the State plan approved under section 402 (as in effect on July 16, 1996) in the home, in or for the month in which the agreement was entered into or court proceedings leading to the determination referred to in paragraph (2)(A)(ii) of this subsection were initiated; or

(ii)(I) would have received the aid in the home, in or for the month referred to in clause (i), if application had been made therefor; or

(II) had been living in the home within 6 months before the month in which the agreement was entered into or the proceedings were initiated, and would have received the aid in or for such month, if, in such month, the child had been living in the home with the relative referred to in paragraph (1) and application for the aid had been made.

(B) RESOURCES DETERMINATION.—For purposes of subparagraph (A), in determining whether a child would have received aid under a State plan approved under section 402 (as in effect on July 16, 1996), a child whose resources (determined pursuant to section 402(a)(7)(B), as so in effect) have a combined value of not more than \$10,000 shall be considered a child whose resources have a combined value of not more than \$1,000 (or such lower amount as the State may determine for purposes of section 402(a)(7)(B)).

(4) **ELIGIBILITY OF CERTAIN ALIEN CHILDREN.**—Subject to title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, if the child is an alien disqualified under section 245A(h) or 210(f) of the Immigration and Nationality Act from receiving aid under the State plan approved under section 402 in or for the month in which the agreement described in paragraph (2)(A)(i) was entered into or court proceedings leading to the determination described in paragraph (2)(A)(ii) were initiated, the child shall be considered to satisfy the requirements of paragraph (3), with respect to the month, if the child would have satisfied the requirements but for the disqualification.

P.L. 82-414 Immigration and Nationality Act Sec. 210. [8 U.S.C. 1160]

(f) **Temporary Disqualification of Newly Legalized Aliens From Receiving Aid to Families With Dependent Children.**—During the five-year period beginning on the date an alien was granted lawful temporary resident status under subsection (a), and notwithstanding any other provision of law, the alien is not eligible for assistance under a State plan funded under part A of title IV of the Social Security Act. Notwithstanding the previous sentence, in the case of an alien who would be eligible for assistance under a State plan funded under part A of title IV of the Social Security Act but for the previous sentence, the provisions of paragraph (3) of section 245A(h) shall apply in the same manner as they apply with respect to paragraph (1) of such section and, for this purpose, any reference in section 245A(h)(3) to paragraph (1) is deemed a reference to the previous sentence.

P.L. 82-414 Immigration and Nationality Act Sec. 245A. [8 U.S.C. 1255a]

(h) **Temporary Disqualification of Newly Legalized Aliens From Receiving Certain Public Welfare Assistance.**—

(1) **In general.**—During the five-year period beginning on the date an alien was granted lawful temporary resident status under subsection (a), and notwithstanding any other provision of law—

(A) except as provided in paragraphs (2) and (3), the alien is not eligible for—

(i) any program of financial assistance furnished under Federal law (whether through grant, loan, guarantee, or otherwise) on the basis of financial need, as such programs are identified by the Attorney General in consultation with other appropriate heads of the various departments and agencies of Government (but in any event including the State program of assistance under part A of title IV of the Social Security Act),

(ii) medical assistance under a State plan approved under title XIX of the Social Security Act, and

(iii) assistance under the Food Stamp Act of 1977; and

(B) a State or political subdivision therein may, to the extent consistent with subparagraph (A) and paragraphs (2) and (3), provide that the alien is not eligible for the programs of financial assistance or for medical assistance described in subparagraph (A)(ii) furnished under the law of that State or political subdivision.

Unless otherwise specifically provided by this section or other law, an alien in temporary lawful residence status granted under subsection (a) shall not be considered (for purposes of any law of a State or political subdivision providing for a program of financial assistance) to be permanently residing in the United States under color of law.

(2) **Exceptions.**—Paragraph (1) shall not apply—

(A) to a Cuban and Haitian entrant (as defined in paragraph (1) or (2)(A) of section 501(e) of Public Law 96-422, as in effect on April 1, 1983), or

- (B) in the case of assistance (other than assistance under a State program funded under part A of title IV of the Social Security Act which is furnished to an alien who is an aged, blind, or disabled individual (as defined in section 1614(a)(1) of the Social Security Act).
- (3) Restricted medicaid benefits.—
- (A) Clarification of entitlement.—Subject to the restrictions under subparagraph (B), for the purpose of providing aliens with eligibility to receive medical assistance—
- (i) paragraph (1) shall not apply,
 - (ii) aliens who would be eligible for medical assistance but for the provisions of paragraph (1) shall be deemed, for purposes of title XIX of the Social Security Act, to be so eligible, and
 - (iii) aliens lawfully admitted for temporary residence under this section, such status not having changed, shall be considered to be permanently residing in the United States under color of law.
- (B) Restriction of benefits.—
- (i) Limitation to emergency services and services for pregnant women.—Notwithstanding any provision of title XIX of the Social Security Act (including subparagraphs (B) and (C) of section 1902(a)(10) of such Act), aliens who, but for subparagraph (A), would be ineligible for medical assistance under paragraph (1), are only eligible for such assistance with respect to—
 - (I) emergency services (as defined for purposes of section 1916(a)(2)(D) of the Social Security Act), and
 - (II) services described in section 1916(a)(2)(B) of such Act (relating to service for pregnant women).
 - (ii) No restriction for exempt aliens and children.—The restrictions of clause (i) shall not apply to aliens who are described in paragraph (2) or who are under 18 years of age.
- (C) Definition of medical assistance.—In this paragraph, the term “medical assistance” refers to medical assistance under a State plan approved under title XIX of the Social Security Act.
- (4) Treatment of certain programs.—Assistance furnished under any of the following provisions of law shall not be construed to be financial assistance described in paragraph (1)(A)(i):
- (A) Richard B. Russell National School Lunch Act.
 - (B) The Child Nutrition Act of 1966.
 - (C) Carl D. Perkins Vocational and Technical Education Act of 1998.
 - (D) Title I of the Elementary and Secondary Education Act of 1965.
 - (E) The Headstart-Follow Through Act.
 - (F) Title I of the Workforce Investment Act of 1998.
 - (G) Title IV of the Higher Education Act of 1965.
 - (H) The Public Health Service Act.
 - (I) Titles V, XVI, and XX, and parts B, D, and E of title IV, of the Social Security Act (and titles I, X, XIV, and XVI of such Act as in effect without regard to the amendment made by section 301 of the Social Security Amendments of 1972).
- (5) Adjustment not affecting fascell-stone benefits.—For the purpose of section 501 of the Refugee Education Assistance Act of 1980 (Public Law 96-122^[3]), assistance shall be continued under such section with respect to an alien without regard to the alien's adjustment of status under this section.

LEGAL DOCUMENTATION

CFR TITLE 45 Sec. 1356.21

(b) Reasonable efforts. The State must make reasonable efforts to maintain the family unit and prevent the unnecessary removal of a child from his/her home, as long as the child's safety is assured; to effect the safe reunification of the child and family (if temporary out-of-home placement is necessary to ensure the immediate safety of the child); and to make and finalize alternate permanency plans in a timely manner when reunification is not appropriate or possible. In order to satisfy the "reasonable efforts" requirements of section 471(a)(15) (as implemented through section 472(a)(1) of the Act), the State must meet the requirements of paragraphs (b) and (d) of this section. In determining reasonable efforts to be made with respect to a child and in making such reasonable efforts, the child's health and safety must be the State's paramount concern.

(1) Judicial determination of reasonable efforts to prevent a child's removal from the home.

(i) When a child is removed from his/her home, the judicial determination as to whether reasonable efforts were made, or were not required to prevent the removal in accordance with paragraph (b)(3) of this section, must be made no later than 60 days from the date the child is removed from the home pursuant to paragraph (k) of this section.

(ii) If the determination concerning reasonable efforts to prevent the removal is not made as specified in paragraph (b)(1)(i) of this section, the child is not eligible under the title IV-E foster care maintenance payments program for the duration of that stay in foster care.

...

(3) Circumstances in which reasonable efforts are not required to prevent a child's removal from home or to reunify the child and family. Reasonable efforts to prevent a child's removal from home or to reunify the child and family are not required if the State agency obtains a judicial determination that such efforts are not required because:

(i) A court of competent jurisdiction has determined that the parent has subjected the child to aggravated circumstances (as defined in State law, which definition may include but need not be limited to abandonment, torture, chronic abuse, and sexual abuse);

(ii) A court of competent jurisdiction has determined that the parent has been convicted of:

(A) Murder (which would have been an offense under section 1111(a) of title 18, United States Code, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;

(B) Voluntary manslaughter (which would have been an offense under section 1112(a) of title 18, United States Code, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;

(C) Aiding or abetting, attempting, conspiring, or soliciting to commit such a murder or such a voluntary manslaughter; or

(D) A felony assault that results in serious bodily injury to the child or another child of the parent; or,

(iii) The parental rights of the parent with respect to a sibling have been terminated involuntarily.

(4) Concurrent planning. Reasonable efforts to finalize an alternate permanency plan may be made concurrently with reasonable efforts to reunify the child and family.

(5) Use of the Federal Parent Locator Service. The State agency may seek the services of the Federal Parent Locator Service to search for absent parents at any point in order to facilitate a permanency plan.

CFR TITLE 45 Sec. 1356.21

(c) Contrary to the welfare determination. Under section 472(a)(1) of the Act, a child's removal from the home must have been the result of a judicial determination (unless the child was removed pursuant to a voluntary placement agreement) to the effect that continuation of residence in the home would be contrary to the welfare, or that placement would be in the best interest, of the child. The contrary to the welfare determination must be made in the first court ruling that sanctions (even temporarily) the removal of a child from home. If the determination regarding contrary to the welfare is not made in the first court ruling pertaining to removal from the home, the child is not eligible for title IV-E foster care maintenance payments for the duration of that stay in foster care.

CFR TITLE 45 Sec. 1356.21

(d) Documentation of judicial determinations. The judicial determinations regarding contrary to the welfare, reasonable efforts to prevent removal, and reasonable efforts to finalize the permanency plan in effect, including judicial determinations that reasonable efforts are not required, must be explicitly documented and must be made on a case-by-case basis and so stated in the court order.

- (1) If the reasonable efforts and contrary to the welfare judicial determinations are not included as required in the court orders identified in paragraphs (b) and (c) of this section, a transcript of the court proceedings is the only other documentation that will be accepted to verify that these required determinations have been made.
- (2) Neither affidavits nor nunc pro tunc orders will be accepted as verification documentation in support of reasonable efforts and contrary to the welfare judicial determinations.
- (3) Court orders that reference State law to substantiate judicial determinations are not acceptable, even if State law provides that a removal must be based on a judicial determination that remaining in the home would be contrary to the child's welfare or that removal can only be ordered after reasonable efforts have been made.

CFR TITLE 45 Sec. 1356.21

(e) Trial home visits. A trial home visit may not exceed six months in duration, unless a court orders a longer trial home visit. If a trial home visit extends beyond six months and has not been authorized by the court, or exceeds the time period the court has deemed appropriate, and the child is subsequently returned to foster care, that placement must then be considered a new placement and title IV-E eligibility must be newly established. Under these circumstances the judicial determinations regarding contrary to the welfare and reasonable efforts to prevent removal are required.

CFR TITLE 45 Sec. 1356.21

(k) Removal from the home of a specified relative.

- (1) For the purposes of meeting the requirements of section 472(a)(1) of the Act, a removal from the home must occur pursuant to:
 - (i) A voluntary placement agreement entered into by a parent or relative which leads to a physical or constructive removal (i.e., a non-physical or paper removal of custody) of the child from the home; or
 - (ii) A judicial order for a physical or constructive removal of the child from a parent or specified relative.

CFR TITLE 45 Sec. 1356.22

b) Federal financial participation is available only for voluntary foster care maintenance expenditures made within the first 180 days of the child's placement in foster care unless there has been a judicial determination by a court of competent jurisdiction, within the first 180 days of such placement, to the effect that the continued voluntary placement is in the best interests of the child.

SSA TITLE IV PART E SEC. 471. [42 U.S.C. 671]

(a) In order for a State to be eligible for payments under this part, it shall have a plan approved by the Secretary which—

(15) provides that—

(A) in determining reasonable efforts to be made with respect to a child, as described in this paragraph, and in making such reasonable efforts, the child's health and safety shall be the paramount concern;

(B) except as provided in subparagraph (D), reasonable efforts shall be made to preserve and reunify families—

(i) prior to the placement of a child in foster care, to prevent or eliminate the need for removing the child from the child's home; and

(ii) to make it possible for a child to safely return to the child's home;

(C) if continuation of reasonable efforts of the type described in subparagraph (B) is determined to be inconsistent with the permanency plan for the child, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child;

(D) reasonable efforts of the type described in subparagraph (B) shall not be required to be made with respect to a parent of a child if a court of competent jurisdiction has determined that—

(i) the parent has subjected the child to aggravated circumstances (as defined in State law, which definition may include but need not be limited to abandonment, torture, chronic abuse, and sexual abuse);

(ii) the parent has—

(I) committed murder (which would have been an offense under section 1111(a) of title 18, United States Code[146], if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;

(II) committed voluntary manslaughter (which would have been an offense under section 1112(a) of title 18, United States Code, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;

(III) aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter; or

(IV) committed a felony assault that results in serious bodily injury to the child or another child of the parent; or (iii) the parental rights of the parent to a sibling have been terminated involuntarily;

(E) if reasonable efforts of the type described in subparagraph (B) are not made with respect to a child as a result of a determination made by a court of competent jurisdiction in accordance with subparagraph (D)—

(i) a permanency hearing (as described in section 475(5)(C)) shall be held for the child within 30 days after the determination; and

- (ii) reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child; and
- (F) reasonable efforts to place a child for adoption or with a legal guardian may be made concurrently with reasonable efforts of the type described in subparagraph (B);

SSA TITLE IV PART E SEC. 472. [42 U.S.C. 672]

(a) IN GENERAL.—

(2) REMOVAL AND FOSTER CARE PLACEMENT REQUIREMENTS.—The removal and foster care placement of a child meet the requirements of this paragraph if—

(A) the removal and foster care placement are in accordance with—

- (i) a voluntary placement agreement entered into by a parent or legal guardian of the child who is the relative referred to in paragraph (1); or
- (ii) a judicial determination to the effect that continuation in the home from which removed would be contrary to the welfare of the child and that reasonable efforts of the type described in section 471(a)(15) for a child have been made. *The contrary to the welfare determination will be made in the first court ruling that sanctions (even temporarily) the removal of a child from home. If the determination regarding contrary to the welfare is not made in the first court ruling pertaining to removal from the home, the child will not be eligible for Title IV-E foster care maintenance payments for the duration of that stay in foster care (section italicized is from DSCYF State Plan);*

(B) the child's placement and care are the responsibility of—

- (i) the State agency administering the State plan approved under section 471; or
- (ii) any other public agency with which the State agency administering or supervising the administration of the State plan has made an agreement which is in effect; and

(C) the child has been placed in a foster family home or child-care institution.

SSA TITLE IV PART E SEC. 472. [42 U.S.C. 672]

(d) Notwithstanding any other provision of this title, Federal payments may be made under this part with respect to amounts expended by any State as foster care maintenance payments under this section, in the case of children removed from their homes pursuant to voluntary placement agreements as described in subsection (a), only if (at the time such amounts were expended) the State has fulfilled all of the requirements of section 422(b)(10).

SSA TITLE IV PART E SEC. 472. [42 U.S.C. 672]

(e) No Federal payment may be made under this part with respect to amounts expended by any State as foster care maintenance payments under this section, in the case of any child who was removed from his or her home pursuant to a voluntary placement agreement as described in subsection (a) and has remained in voluntary placement for a period in excess of 180 days, unless there has been a judicial determination by a court of competent jurisdiction (within the first 180 days of such placement) to the effect that such placement is in the best interests of the child.

SSA TITLE IV PART E SEC. 472. [42 U.S.C. 672]

(f) For the purposes of this part and part B of this title,

- (1) the term “voluntary placement” means an out-of-home placement of a minor, by or with participation of a State agency, after the parents or guardians of the minor have requested the assistance of the agency and signed a voluntary placement agreement; and
- (2) the term “voluntary placement agreement” means a written agreement, binding on the parties to the agreement, between the State agency, any other agency acting on its behalf, and the parents or guardians of a minor child which specifies, at a minimum, the legal status of the child and the rights and obligations of the parents or guardians, the child, and the agency while the child is in placement.

SSA TITLE IV PART E SEC. 472. [42 U.S.C. 672]

(g) In any case where—

- (1) the placement of a minor child in foster care occurred pursuant to a voluntary placement agreement entered into by the parents or guardians of such child as provided in subsection (a), and;
- (2) such parents or guardians request (in such manner and form as the Secretary may prescribe) that the child be returned to their home or to the home of a relative, the voluntary placement agreement shall be deemed to be revoked unless the State agency opposes such request and obtains a judicial determination, by a court of competent jurisdiction, that the return of the child to such home would be contrary to the child's best interests.

APPROVALS

CFR TITLE 45 Sec. 1355.20

(a) Unless otherwise specified, the following terms as they appear in 45 CFR parts 1355, 1356 and 1357 of this title are defined as follows—

Child care institution means a private child care institution, or a public child care institution which accommodates no more than twenty-five children, and is licensed by the State in which it is situated or has been approved by the agency of such State or tribal licensing authority (with respect to child care institutions on or near Indian Reservations) responsible for licensing or approval of institutions of this type as meeting the standards established for such licensing. This definition must not include detention facilities, forestry camps, training schools, or any other facility operated primarily for the detention of children who are determined to be delinquent.

Foster family home means, for the purpose of title IV-E eligibility, the home of an individual or family licensed or approved as meeting the standards established by the State licensing or approval authority(ies) (or with respect to foster family homes on or near Indian reservations, by the tribal licensing or approval authority(ies)), that provides 24-hour out-of-home care for children. The term may include group homes, agency-operated boarding homes or other facilities licensed or approved for the purpose of providing foster care by the State agency responsible for approval or licensing of such facilities. Foster family homes that are approved must be held to the same standards as foster family homes that are licensed. Anything less than full licensure or approval is insufficient for meeting title IV-E eligibility requirements. States may, however, claim title IV-E reimbursement during the period of time between the date a prospective foster family home satisfies all requirements for licensure or approval and the date the actual license is issued, not to exceed 60 days.

CFR TITLE 45 Sec. 1356.21

(e) Trial home visits. A trial home visit may not exceed six months in duration, unless a court orders a longer trial home visit. If a trial home visit extends beyond six months and has not been authorized by the court, or exceeds the time period the court has deemed appropriate, and the child is subsequently returned to foster care, that placement must then be considered a new placement and title IV-E eligibility must be newly established. Under these circumstances the judicial determinations regarding contrary to the welfare and reasonable efforts to prevent removal are required.

CFR TITLE 45 Sec. 1356.30

(b) The State may not approve or license any prospective foster or adoptive parent, nor may the State claim FFP for any foster care maintenance or adoption assistance payment made on behalf of a child placed in a foster home operated under the auspices of a child placing agency or on behalf of a child placed in an adoptive home through a private adoption agency, if the State finds that, based on a criminal records check conducted in accordance with paragraph (a) of this section, a court of competent jurisdiction has determined that the prospective foster or adoptive parent has been convicted of a felony involving:

- (1) Child abuse or neglect;
- (2) Spousal abuse;
- (3) A crime against a child or children (including child pornography); or,
- (4) A crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery.

SSA TITLE IV PART E SEC. 471. [42 U.S.C. 671]

(a) In order for a State to be eligible for payments under this part, it shall have a plan approved by the Secretary which—

(20)(A) unless an election provided for in subparagraph (B) is made with respect to the State, provides procedures for criminal records checks for any prospective foster or adoptive parent before the foster or adoptive parent may be finally approved for placement of a child on whose behalf foster care maintenance payments or adoption assistance payments are to be made under the State plan under this part, including procedures requiring that—

- (i) in any case in which a record check reveals a felony conviction for child abuse or neglect, for spousal abuse, for a crime against children (including child pornography), or for a crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery, if a State finds that a court of competent jurisdiction has determined that the felony was committed at any time, such final approval shall not be granted; and
- (ii) in any case in which a record check reveals a felony conviction for physical assault, battery, or a drug-related offense, if a State finds that a court of competent jurisdiction has determined that the felony was committed within the past 5 years, such final approval shall not be granted; and

SSA TITLE IV PART E SEC. 472. [42 U.S.C. 672]

(b) Foster care maintenance payments may be made under this part only on behalf of a child described in subsection (a) of this section who is—

- (1) in the foster family home of an individual, whether the payments therefor are made to such individual or to a public or private child-placement or child-care agency, or
- (2) in a child-care institution, whether the payments therefor are made to such institution or to a public or private child-placement or child-care agency, which payments shall be limited so as to

include in such payments only those items which are included in the term “foster care maintenance payments” (as defined in section 475(4)).

SSA TITLE IV PART E SEC. 472. [42 U.S.C. 672]

(c) For the purposes of this part,

(1) the term “foster family home” means a foster family home for children which is licensed by the State in which it is situated or has been approved, by the agency of such State having responsibility for licensing homes of this type, as meeting the standards established for such licensing; and

(2) the term “child-care institution” means a private child-care institution, or a public child-care institution which accommodates no more than twenty-five children, which is licensed by the State in which it is situated or has been approved, by the agency of such State responsible for licensing or approval of institutions of this type, as meeting the standards established for such licensing, but the term shall not include detention facilities, forestry camps, training schools, or any other facility operated primarily for the detention of children who are determined to be delinquent.

SSA TITLE IV PART E SEC. 472. [42 U.S.C. 672]

(d) Notwithstanding any other provision of this title, Federal payments may be made under this part with respect to amounts expended by any State as foster care maintenance payments under this section, in the case of children removed from their homes pursuant to voluntary placement agreements as described in subsection (a), only if (at the time such amounts were expended) the State has fulfilled all of the requirements of section 422(b)(10).

SSA TITLE IV PART E SEC. 472. [42 U.S.C. 672]

(e) No Federal payment may be made under this part with respect to amounts expended by any State as foster care maintenance payments under this section, in the case of any child who was removed from his or her home pursuant to a voluntary placement agreement as described in subsection (a) and has remained in voluntary placement for a period in excess of 180 days, unless there has been a judicial determination by a court of competent jurisdiction (within the first 180 days of such placement) to the effect that such placement is in the best interests of the child.

PARENTAL DEPRIVATION

CFR TITLE 45 Sec. 233.10

(b) Federal financial participation.

(2) The following is a summary statement regarding the groups for whom Federal financial participation is available. (More detailed information is given elsewhere.)

(ii) AFDC—for:

(a) Needy children under the plan who are:

(1) Under the age of 18, or age 18 if a full-time student in a secondary school, or in the equivalent level of vocational or technical training, and reasonably expected to complete the program before reaching age 19;

(2) Deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, or unemployment of a principal earner, and

(3) Living in the home of a parent or of certain relatives specified in the Act.

SSA TITLE IV PART E SEC. 406 (a) (1) (in effect on July 16, 1996)

(a) The term "dependent child" means a needy child (1) who has been deprived of parental support or care by reason of the death, continued absence from the home (other than absence occasioned solely by reason of the performance of active duty in the uniformed services of the United States), or physical or mental incapacity of a parent,...

PERMANENCY HEARINGS

CFR TITLE 45 Sec. 1356.21

(b) Reasonable efforts. The State must make reasonable efforts to maintain the family unit and prevent the unnecessary removal of a child from his/her home, as long as the child's safety is assured; to effect the safe reunification of the child and family (if temporary out-of-home placement is necessary to ensure the immediate safety of the child); and to make and finalize alternate permanency plans in a timely manner when reunification is not appropriate or possible. In order to satisfy the "reasonable efforts" requirements of section 471(a)(15) (as implemented through section 472(a)(1) of the Act), the State must meet the requirements of paragraphs (b) and (d) of this section. In determining reasonable efforts to be made with respect to a child and in making such reasonable efforts, the child's health and safety must be the State's paramount concern.

...

(2) Judicial determination of reasonable efforts to finalize a permanency plan.

(i) The State agency must obtain a judicial determination that it has made reasonable efforts to finalize the permanency plan that is in effect (whether the plan is reunification, adoption, legal guardianship, placement with a fit and willing relative, or placement in another planned permanent living arrangement) within twelve months of the date the child is considered to have entered foster care in accordance with the definition at Sec. 1355.20 of this part, and at least once every twelve months thereafter while the child is in foster care.

(ii) If such a judicial determination regarding reasonable efforts to finalize a permanency plan is not made, the child becomes ineligible under title IV-E from the end of the twelfth month following the date the child is considered to have entered foster care in accordance with the definition at Sec. 1355.20 of this part, or the end of the month in which the most recent judicial determination of reasonable efforts to finalize a permanency plan was made, and remains ineligible until such a judicial determination is made.

(3) Circumstances in which reasonable efforts are not required to prevent a child's removal from home or to reunify the child and family. Reasonable efforts to prevent a child's removal from home or to reunify the child and family are not required if the State agency obtains a judicial determination that such efforts are not required because:

(i) A court of competent jurisdiction has determined that the parent has subjected the child to aggravated circumstances (as defined in State law, which definition may include but need not be limited to abandonment, torture, chronic abuse, and sexual abuse);

(ii) A court of competent jurisdiction has determined that the parent has been convicted of:

(A) Murder (which would have been an offense under section 1111(a) of title 18, United States Code, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;

(B) Voluntary manslaughter (which would have been an offense under section 1112(a) of title 18, United States Code, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;

(C) Aiding or abetting, attempting, conspiring, or soliciting to commit such a murder or such a voluntary manslaughter; or

(D) A felony assault that results in serious bodily injury to the child or another child of the parent; or,

- (iii) The parental rights of the parent with respect to a sibling have been terminated involuntarily.
- (4) Concurrent planning. Reasonable efforts to finalize an alternate permanency plan may be made concurrently with reasonable efforts to reunify the child and family.
- (5) Use of the Federal Parent Locator Service. The State agency may seek the services of the Federal Parent Locator Service to search for absent parents at any point in order to facilitate a permanency plan.

CFR TITLE 45 Sec. 1356.21

(e) Trial home visits. A trial home visit may not exceed six months in duration, unless a court orders a longer trial home visit. If a trial home visit extends beyond six months and has not been authorized by the court, or exceeds the time period the court has deemed appropriate, and the child is subsequently returned to foster care, that placement must then be considered a new placement and title IV-E eligibility must be newly established. Under these circumstances the judicial determinations regarding contrary to the welfare and reasonable efforts to prevent removal are required.

CFR TITLE 45 Sec. 1356.22

b) Federal financial participation is available only for voluntary foster care maintenance expenditures made within the first 180 days of the child's placement in foster care unless there has been a judicial determination by a court of competent jurisdiction, within the first 180 days of such placement, to the effect that the continued voluntary placement is in the best interests of the child.

SSA TITLE IV PART E SEC. 471. [42 U.S.C. 671]

(a) In order for a State to be eligible for payments under this part, it shall have a plan approved by the Secretary which—

(15) provides that—

(A) in determining reasonable efforts to be made with respect to a child, as described in this paragraph, and in making such reasonable efforts, the child's health and safety shall be the paramount concern;

(B) except as provided in subparagraph (D), reasonable efforts shall be made to preserve and reunify families—

(i) prior to the placement of a child in foster care, to prevent or eliminate the need for removing the child from the child's home; and

(ii) to make it possible for a child to safely return to the child's home;

(C) if continuation of reasonable efforts of the type described in subparagraph (B) is determined to be inconsistent with the permanency plan for the child, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child;

(D) reasonable efforts of the type described in subparagraph (B) shall not be required to be made with respect to a parent of a child if a court of competent jurisdiction has determined that—

(i) the parent has subjected the child to aggravated circumstances (as defined in State law, which definition may include but need not be limited to abandonment, torture, chronic abuse, and sexual abuse);

(ii) the parent has—

(I) committed murder (which would have been an offense under section 1111(a) of title 18, United States Code[146], if the offense had occurred

- in the special maritime or territorial jurisdiction of the United States) of another child of the parent;
- (II) committed voluntary manslaughter (which would have been an offense under section 1112(a) of title 18, United States Code, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;
- (III) aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter; or
- (IV) committed a felony assault that results in serious bodily injury to the child or another child of the parent; or (iii) the parental rights of the parent to a sibling have been terminated involuntarily;
- (E) if reasonable efforts of the type described in subparagraph (B) are not made with respect to a child as a result of a determination made by a court of competent jurisdiction in accordance with subparagraph (D)—
 - (i) a permanency hearing (as described in section 475(5)(C)) shall be held for the child within 30 days after the determination; and
 - (ii) reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child; and
- (F) reasonable efforts to place a child for adoption or with a legal guardian may be made concurrently with reasonable efforts of the type described in subparagraph (B);

SSA TITLE IV PART E SEC. 472. [42 U.S.C. 672]

(d) Notwithstanding any other provision of this title, Federal payments may be made under this part with respect to amounts expended by any State as foster care maintenance payments under this section, in the case of children removed from their homes pursuant to voluntary placement agreements as described in subsection (a), only if (at the time such amounts were expended) the State has fulfilled all of the requirements of section 422(b)(10).

SSA TITLE IV PART E SEC. 472. [42 U.S.C. 672]

(e) No Federal payment may be made under this part with respect to amounts expended by any State as foster care maintenance payments under this section, in the case of any child who was removed from his or her home pursuant to a voluntary placement agreement as described in subsection (a) and has remained in voluntary placement for a period in excess of 180 days, unless there has been a judicial determination by a court of competent jurisdiction (within the first 180 days of such placement) to the effect that such placement is in the best interests of the child.

SSA TITLE IV PART E SEC. 472. [42 U.S.C. 672]

- (f) For the purposes of this part and part B of this title,
- (1) the term “voluntary placement” means an out-of-home placement of a minor, by or with participation of a State agency, after the parents or guardians of the minor have requested the assistance of the agency and signed a voluntary placement agreement; and
 - (2) the term “voluntary placement agreement” means a written agreement, binding on the parties to the agreement, between the State agency, any other agency acting on its behalf, and the parents or guardians of a minor child which specifies, at a minimum, the legal status of the child and the rights and obligations of the parents or guardians, the child, and the agency while the child is in placement.

SSA TITLE IV PART E SEC. 472. [42 U.S.C. 672]

(g) In any case where—

- (1) the placement of a minor child in foster care occurred pursuant to a voluntary placement agreement entered into by the parents or guardians of such child as provided in subsection (a), and
- (2) such parents or guardians request (in such manner and form as the Secretary may prescribe) that the child be returned to their home or to the home of a relative, the voluntary placement agreement shall be deemed to be revoked unless the State agency opposes such request and obtains a judicial determination, by a court of competent jurisdiction, that the return of the child to such home would be contrary to the child's best interests.

PRIOR LIVING

CFR TITLE 45 Sec. 233.10

(b) Federal financial participation.

(2) The following is a summary statement regarding the groups for whom Federal financial participation is available. (More detailed information is given elsewhere.)

(ii) AFDC—for:

(a) Needy children under the plan who are:

- (1) Under the age of 18, or age 18 if a full-time student in a secondary school, or in the equivalent level of vocational or technical training, and reasonably expected to complete the program before reaching age 19;
- (2) Deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, or unemployment of a principal earner, and
- (3) Living in the home of a parent or of certain relatives specified in the Act.

CFR TITLE 45 Sec. 1356.21

(k) Removal from the home of a specified relative.

(1) For the purposes of meeting the requirements of section 472(a)(1) of the Act, a removal from the home must occur pursuant to:

- (i) A voluntary placement agreement entered into by a parent or relative which leads to a physical or constructive removal (i.e., a non-physical or paper removal of custody) of the child from the home; or
- (ii) A judicial order for a physical or constructive removal of the child from a parent or specified relative.

(2) A removal has not occurred in situations where legal custody is removed from the parent or relative and the child remains with the same relative in that home under supervision by the State agency.

(3) A child is considered constructively removed on the date of the first judicial order removing custody, even temporarily, from the appropriate specified relative or the date that the voluntary placement agreement is signed by all relevant parties.

CFR TITLE 45 Sec. 1356.21

(l) Living with a specified relative. For purposes of meeting the requirements for living with a specified relative prior to removal from the home under section 472(a)(1) of the Act and all of the conditions under section 472(a)(4), one of the two following situations must apply:

- (1) The child was living with the parent or specified relative, and was AFDC eligible in that home in the month of the voluntary placement agreement or initiation of court proceedings; or
- (2) The child had been living with the parent or specified relative within six months of the month of the voluntary placement agreement or the initiation of court proceedings, and the child would have been AFDC eligible in that month if s/he had still been living in that home.

SSA TITLE IV PART E SEC. 406 (a) (1) (in effect on July 16, 1996)

(a) The term "dependent child" means a needy child (1) who has been deprived of parental support or care by reason of the death, continued absence from the home (other than absence occasioned solely by reason of the performance of active duty in the uniformed services of the United States), or physical or mental incapacity of a parent,...

SSA TITLE IV PART E SEC. 472. [42 U.S.C. 672]

(a) IN GENERAL.—

(1) ELIGIBILITY.—Each State with a plan approved under this part shall make foster care maintenance payments on behalf of each child who has been removed from the home of a relative specified in section 406(a) (as in effect on July 16, 1996) into foster care if—

- (A) the removal and foster care placement met, and the placement continues to meet, the requirements of paragraph (2); and
- (B) the child, while in the home, would have met the AFDC eligibility requirement of paragraph (3).

SSA TITLE IV PART E SEC. 472. [42 U.S.C. 672]

(a) IN GENERAL.—

(3) AFDC ELIGIBILITY REQUIREMENT.—

(A) IN GENERAL.—A child in the home referred to in paragraph (1) would have met the AFDC eligibility requirement of this paragraph if the child—

(i) would have received aid under the State plan approved under section 402 (as in effect on July 16, 1996) in the home, in or for the month in which the agreement was entered into or court proceedings leading to the determination referred to in paragraph (2)(A)(ii) of this subsection were initiated; or

(ii)(I) would have received the aid in the home, in or for the month referred to in clause (i), if application had been made therefor; or

(II) had been living in the home within 6 months before the month in which the agreement was entered into or the proceedings were initiated, and would have received the aid in or for such month, if, in such month, the child had been living in the home with the relative referred to in paragraph (1) and application for the aid had been made.

ADOPTION ASSISTANCE

CFR TITLE 45 Sec. 233.10

(b) Federal financial participation.

(1) The provisions which govern Federal financial participation in assistance payments are set forth in the Social Security Act, throughout this chapter, and in other policy issuances of the Secretary. Where indicated, State plan provisions are prerequisite to Federal financial

participation with respect to the applicable group and payments. State plan provisions on need, the amount of assistance, and eligibility determine the limits of Federal financial participation. Federal financial participation is excluded from assistance payments in which the State refuses to participate because of the failure of a local authority to apply such State plan provisions.

(2) The following is a summary statement regarding the groups for whom Federal financial participation is available. (More detailed information is given elsewhere.)

(i) OAA—for needy individuals under the plan who are 65 years of age or older. (ii) AFDC—for:

(a) Needy children under the plan who are:

(1) Under the age of 18, or age 18 if a full-time student in a secondary school, or in the equivalent level of vocational or technical training, and reasonably expected to complete the program before reaching age 19;

SSA TITLE IV PART E SEC. 473. [42 U.S.C. 673]

(a)(2)(C) has been determined by the State, pursuant to subsection (c) of this section, to be a child with special needs.

SSA TITLE IV PART E SEC. 473. [42 U.S.C. 673]

(c) For purposes of this section, a child shall not be considered a child with special needs unless—

(1) the State has determined that the child cannot or should not be returned to the home of his parents; and

(2) the State had first determined

(A) that there exists with respect to the child a specific factor or condition (such as his ethnic background, age, or membership in a minority or sibling group, or the presence of factors such as medical conditions or physical, mental, or emotional handicaps) because of which it is reasonable to conclude that such child cannot be placed with adoptive parents without providing adoption assistance under this section or medical assistance under title XIX, and

(B) that, except where it would be against the best interests of the child because of such factors as the existence of significant emotional ties with prospective adoptive parents while in the care of such parents as a foster child, a reasonable, but unsuccessful, effort has been made to place the child with appropriate adoptive parents without providing adoption assistance under this section or medical assistance under title XIX.

SSA TITLE IV PART E SEC. 472. [42 U.S.C. 672]

(a) IN GENERAL.—

(3) AFDC ELIGIBILITY REQUIREMENT.—

(A) IN GENERAL.—A child in the home referred to in paragraph (1) would have met the AFDC eligibility requirement of this paragraph if the child—

(i) would have received aid under the State plan approved under section 402 (as in effect on July 16, 1996) in the home, in or for the month in which the agreement was entered into or court proceedings leading to the determination referred to in paragraph (2)(A)(ii) of this subsection were initiated; or

(ii) (I) would have received the aid in the home, in or for the month referred to in clause (i), if application had been made therefor; or

(II) had been living in the home within 6 months before the month in which the agreement was entered into or the proceedings were initiated, and would have received the aid in or for such month, if, in such month,

the child had been living in the home with the relative referred to in paragraph (1) and application for the aid had been made.

(B) **RESOURCES DETERMINATION.**—For purposes of subparagraph (A), in determining whether a child would have received aid under a State plan approved under section 402 (as in effect on July 16, 1996), a child whose resources (determined pursuant to section 402(a)(7)(B), as so in effect) have a combined value of not more than \$10,000 shall be considered a child whose resources have a combined value of not more than \$1,000 (or such lower amount as the State may determine for purposes of section 402(a)(7)(B)).

(4) **ELIGIBILITY OF CERTAIN ALIEN CHILDREN.**—Subject to title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, if the child is an alien disqualified under section 245A(h) or 210(f) of the Immigration and Nationality Act from receiving aid under the State plan approved under section 402 in or for the month in which the agreement described in paragraph (2)(A)(i) was entered into or court proceedings leading to the determination described in paragraph (2)(A)(ii) were initiated, the child shall be considered to satisfy the requirements of paragraph (3), with respect to the month, if the child would have satisfied the requirements but for the disqualification.

SSA TITLE IV PART E SEC. 473. [42 U.S.C. 673]

(a)(2)(B)

(i) would have received aid under the State plan approved under section 402 (as in effect on July 16, 1996) in or for the month in which such agreement was entered into or court proceedings leading to the removal of such child from the home were initiated, or

(ii)(I) would have received such aid in or for such month if application had been made therefore, or

(II) had been living with a relative specified in section 406(a) (as in effect on July 16, 1996) within six months prior to the month in which such agreement was entered into or such proceedings were initiated, and would have received such aid in or for such month if in such month he had been living with such a relative and application therefore had been made, or

(iii) is a child described in subparagraph (A)(ii) or (A)(iii), and

CFR TITLE 45 Sec. 1356.21

(c) Contrary to the welfare determination. Under section 472(a)(1) of the Act, a child's removal from the home must have been the result of a judicial determination (unless the child was removed pursuant to a voluntary placement agreement) to the effect that continuation of residence in the home would be contrary to the welfare, or that placement would be in the best interest, of the child. The contrary to the welfare determination must be made in the first court ruling that sanctions (even temporarily) the removal of a child from home. If the determination regarding contrary to the welfare is not made in the first court ruling pertaining to removal from the home, the child is not eligible for title IV-E foster care maintenance payments for the duration of that stay in foster care.

CFR TITLE 45 Sec. 1356.21

(k) Removal from the home of a specified relative.

(1) For the purposes of meeting the requirements of section 472(a)(1) of the Act, a removal from the home must occur pursuant to:

(i) A voluntary placement agreement entered into by a parent or relative which leads to a physical or constructive removal (i.e., a non-physical or paper removal of custody) of the child from the home; or

(ii) A judicial order for a physical or constructive removal of the child from a parent or specified relative.

SSA TITLE IV PART E SEC. 472. [42 U.S.C. 672]

(f) For the purposes of this part and part B of this title,

(1) the term “voluntary placement” means an out-of-home placement of a minor, by or with participation of a State agency, after the parents or guardians of the minor have requested the assistance of the agency and signed a voluntary placement agreement; and

(2) the term “voluntary placement agreement” means a written agreement, binding on the parties to the agreement, between the State agency, any other agency acting on its behalf, and the parents or guardians of a minor child which specifies, at a minimum, the legal status of the child and the rights and obligations of the parents or guardians, the child, and the agency while the child is in placement.

SSA TITLE IV PART E SEC. 473. [42 U.S.C. 673]

(a)(2)(A)[155] For purposes of paragraph (1)(B)(ii), a child meets the requirements of this paragraph if the child—

(i)(I)(aa) was removed from the home of a relative specified in section 406(a) (as in effect on July 16, 1996) and placed in foster care in accordance with a voluntary placement agreement with respect to which Federal payments are provided under section 474 (or section 403, as such section was in effect on July 16, 1996), or in accordance with a judicial determination to the effect that continuation in the home would be contrary to the welfare of the child; and

(bb) met the requirements of section 472(a)(3) with respect to the home referred to in item (aa) of this subclause

(II) meets all of the requirements of title XVI with respect to eligibility for supplemental security income benefits; or

(III) is a child whose costs in a foster family home or child-care institution are covered by the foster care maintenance payments being made with respect to the minor parent of the child as provided in section 475(4)(B); and

(ii) has been determined by the State, pursuant to subsection (c) of this section, to be a child with special needs.

SSA TITLE IV PART E SEC. 473. [42 U.S.C. 673]

(a)(2)(A)[155] For purposes of paragraph (1)(B)(ii), a child meets the requirements of this paragraph if the child—

(i)(I)(aa) was removed from the home of a relative specified in section 406(a) (as in effect on July 16, 1996) and placed in foster care in accordance with a voluntary placement agreement with respect to which Federal payments are provided under section 474 (or section 403, as such section was in effect on July 16, 1996), or in accordance with a judicial determination to the effect that continuation in the home would be contrary to the welfare of the child; and

(bb) met the requirements of section 472(a)(3) with respect to the home referred to in item (aa) of this subclause

(II) meets all of the requirements of title XVI with respect to eligibility for supplemental security income benefits; or

(III) is a child whose costs in a foster family home or child-care institution are covered by the foster care maintenance payments being made with respect to the minor parent of the child as provided in section 475(4)(B); and

(ii) has been determined by the State, pursuant to subsection (c) of this section, to be a child with special needs.

APPENDIX C: CHILD WELFARE POLICY MANUAL (CWPM) CITATIONS

DEMOGRAPHIC INFORMATION

8.3A.2 TITLE IV-E, Foster Care Maintenance Payments Program, Eligibility, Age

Question: For what classes of title IV-E eligible children does title IV-E allow continuation of foster care maintenance payments after age 18 and reimbursements for those payments? May a State, for example, claim Federal financial participation (FFP) for children in foster care who have mental or physical handicaps who remain in care until age 21?

Answer: Under section 406 (a) of the Social Security Act (the Act) (as in effect on July 16, 1996) a dependent child is defined as one under the age of 18. This age limit applies to title IV-E foster care eligibility under section 472 of the Act. The only exception under section 406 (a) is (at State option) for those children who are over 18 and under the age of 19 and who are full time students expected to complete their secondary schooling or equivalent training before reaching age 19. There is no provision under title IV-E which specifically allows payments on behalf of mentally or physically handicapped children in foster care who are age 18 or older. Therefore, no federal financial participation is available for such payment unless the requirements of 45 CFR 233.90 are met.

On the other hand, title IV-E adoption assistance (at State option) may be continued to age 21 with respect to a child with a mental or physical handicap.

- **Source/Date:** ACYF-CB-PIQ-85-05 (4/12/85)
- **Legal and Related References:** Social Security Act - sections 406 (a) (as in effect on July 16, 1996) and 472

Question: Can a youth who was previously title IV-E eligible who has "aged out" of foster care at age 18 retain his/her title IV-E eligibility if he/she re-enters foster care? The youth is under age 19 and expected to graduate from high school before reaching the age of 19.

Answer: No. The State must newly determine the child's title IV-E foster care eligibility once a child ages out of foster care at age 18 and the State no longer has placement and care responsibility. Section 8.3A.10 Q&A2 of the Child Welfare Policy Manual explains that a re-determination of title IV-E eligibility is permitted only when the child is continuously in foster care status and remains under the responsibility of the State agency for placement and care, neither of which is the case as described.

However, a youth at age 18 could retain his/her title IV-E eligibility if s/he provides written authorization for the State's *continued* placement and care responsibility prior to aging out of foster care, and is a full time student and expected to complete his/her secondary schooling or equivalent training before reaching age 19 consistent with the State's former AFDC plan.

- **Source/Date:** 12/31/07
- **Legal and Related References:** Social Security Act – section 472(a)(3); Child Welfare Policy Manual section 8.3A.10 Q&A2

FINANCIAL DEPRIVATION

8.4A TITLE IV-E, General Title IV-E Requirements, AFDC Eligibility

Question: Section 108 (d) of the Personal Responsibility Work Opportunity Reconciliation Act (PRWORA) (as amended by the Balanced Budget Act of 1997, P.L. 105-33) links eligibility for Federal foster care and adoption assistance to the Aid to Families with Dependent Children (AFDC) program as it was in effect on July 16, 1996. Section 401(a) of PRWORA limits Federal public benefits to “qualified aliens.” The term “qualified alien” was not defined or in use on July 16, 1996. How are States to apply these two provisions?

Answer: Alien children must be eligible for AFDC under a State’s July 16, 1996 plan and must also meet the PRWORA definition of “qualified alien” to be eligible for Federal foster care maintenance or adoption assistance (except that children receiving adoption assistance pursuant to agreements signed before August 22, 1996 may continue to receive such assistance).

- **Source/Date:** ACYF-CB-PIQ-99-01 (1/14/99)
- **Legal and Related References:** Social Security Act – Titles IV-E; the Personal Responsibility Work Opportunity Reconciliation Act (PL 104-193); Balanced Budget Act of 1997 (PL 105-33)

Question: Under the following circumstances, is the child eligible for title IV-E foster care? Aid to Families with Dependent Children (AFDC) eligibility for a child is based on incapacity of the parent. In the month following removal, the parent is no longer considered incapacitated. By the time of the twelve month eligibility redetermination, the family is no longer eligible for AFDC. What is the title IV-E status of the child?

Answer: The child is not eligible for title IV-E foster care unless the AFDC deprivation requirement is met. Incapacity of a parent is one of the reasons a child may be determined to be deprived of parental support or care under AFDC (reference section 406 (a) and 407 of the Act (as such sections were in effect on July 16, 1996) and 45 CFR 233.90 (c)(1)(i)). Eligibility ends when the parent is no longer incapacitated, unless a different reason for deprivation has emerged, such as death or absence from the home.

- **Source/Date:** ACYF-CB-PIQ-85-07 (6/25/85)
- **Legal and Related References:** Social Security Act – sections 406 (a) and 407 (as in effect on July 16, 1996); 45 CFR 233.90

Question: When continued deprivation cannot be substantiated after initial eligibility has been established because the whereabouts of the parent from whom the child was removed cannot be determined, is the child no longer eligible under title IV-E?

Answer: The inability to determine the whereabouts of the parent from whose home the child was removed does not preclude continuing eligibility for title IV-E foster care maintenance payments.

At the time of the twelve month redetermination of eligibility, both need and deprivation must be documented. Deprivation of parental support or care may be based on the death, continued absence from the home, physical or mental incapacity of a parent, or at State option, unemployment of the principal wage earner. If the whereabouts of the parent from whose home the child was removed cannot be determined by the State agency at the time of redetermination and documentation in the case record verifies the efforts made to locate the parent(s), then deprivation may be established based on continued absence from the home.

However, the continued absence of the parents from the home must be accompanied by factors such as set forth in 45 CFR 233.90 I(1)(iii): “...When the nature of the absence is such as either to interrupt or to terminate the parent’s functioning as provider of maintenance, physical care, or guidance for the child, and the known or indefinite duration of the absence precludes counting on the parent’s performance of the function of planning for the present support or care of the child.”

While the specific circumstances of either of the parents may not be known to the agency, documentation of their continued absence is required in order to redetermine the child’s eligibility for

title IV-E foster care. The method for substantiation of the parents' absence is left to State policy and procedure.

If the child had been removed from the home of a relative rather than from the parent(s)' home, the relative's home is reviewed at the time of redetermination to establish continuing deprivation of parental support and care. If either or both parents are not in that household at redetermination, then the child is so deprived, based on continued absence of the parent(s) from that home.

On the other hand, the continued absence of parents from the home cannot be used as basis for determining that a child is initially deprived of parental support or care, in cases where there is an inability to document that the child had been living in the home of any parent or relative, e.g., in the case of an abandoned child.

- **Source/Date:** ACYF-CB-PIQ-85-07 (6/25/85)
- **Legal and Related References:** Social Security Act – sections 406 (a) and 472 (a); 45 CFR 233.90

Question: During the time the child is receiving title IV-E foster care payments, the parental rights of his parents are terminated. The child is subsequently moved into a residential care facility which is not eligible to receive foster care payments and the title IV-E case is discontinued. Later, he is again placed into a foster home and reapplication for title IV-E foster care is made. In considering eligibility for this reapplication, the deprivation at the time of court action, found initially and verified under the old foster care case, can be utilized. However, to meet the requirement of "continues to be eligible," must deprivation with regard to the birth parents again be established or may the termination of parental rights be used to constitute deprivation?

Answer: If the child has not returned to his own home and has been continuously in a foster care status since removal from the home (whether or not the facility is eligible to receive payments under title IV-E), a redetermination of eligibility would be appropriate at the time he returned to a facility eligible for Federal financial participation (FFP).

A redetermination of the deprivation factor at that time would consist of a confirmation that the conditions at the time of removal from the home continued to exist or that termination of parental rights (TPR) had occurred. In the latter case, the TPR would, from that point and throughout this course of foster care, become the reason for continuing eligibility in terms of the deprivation factor.

If, however, the child is not continuously in foster care status and returns to the home of a relative that is considered to be his own home, then a subsequent re-entry into the foster care system requires a new (initial) determination of all eligibility factors.

In such a situation, where the child was living in the home of another relative after termination of parental rights and was later removed from the home of that relative, deprivation would then be based upon the absence of the parent(s) from the home of the relative, rather than TPR. (See section 406(a) (as in effect on July 16, 1996)).

- **Source/Date:** ACYF-CB-PIQ-86-03 (5/9/86)
- **Legal and Related References:** Social Security Act – sections 406 (a) and 407 (as in effect on July 16, 1996); 45 CFR 233.90

Question: Aid to Families with Dependent Children (AFDC) initial eligibility requires the counting of a step-parent's income. Is this requirement applicable to title IV-E?

Answer: If the State deems step-parent income available to the child pursuant to its July 16, 1996 AFDC State plan, step-parent income must be counted in determining title IV-E eligibility (45 CFR 233.30 (a)(3)(xiv)).

- **Source/Date:** ACYF-CB-PIQ-85-07 (6/25/85)
- **Legal and Related References:** 45 CFR 233.30

Question: Under the Aid to Families with Dependent Children (AFDC) regulations, certain work expense deductions and disregards are allowable in determining eligibility. In determining the amount of a child's earnings, is the AFDC budgeting procedure to be followed or are States allowed to establish a separate set of budgeting procedures for title IV-E?

Answer: The AFDC regulations and procedures (45 CFR 233.20) are applicable in the title IV-E foster care maintenance payments program. In determining the eligibility of a child who is receiving foster care benefits under title IV-E, the amount of the child's gross income should be applied to 185% of the need standard, and eligibility would continue in terms of need as long as his gross income did not exceed that point. However, in applying the 185% test when determining initial eligibility, the State has the option to disregard the earned income of a dependent child who is a full time student. Once the child is receiving payments under the title IV-E program, the earned income of the child who is a full time student is disregarded indefinitely (402 (a)(8)(A)(i) and 402 (a)(8)(A)(vii)).

If a portion of the child's income is applied to the foster care maintenance cost, the State's claim for Federal financial participation should include only its share of the amount paid for foster care that has not been offset by the child's countable income.

- **Source/Date:** ACYF-CB-PIQ-85-07 (6/25/85)
- **Legal and Related References:** Social Security Act – 45 CFR 233.20

Question: A State asks whether the payment standard or the Aid to Families with Dependent Children (AFDC) need standard to determine AFDC eligibility shall be used to determine eligibility for the title IV-E program.

Answer: The AFDC need standard should be used for determining eligibility for the title IV-E program. Section 472 (a) of the Social Security Act defines as eligible "a child who would meet the requirements of section 406 (a)...;" as in effect on July 16, 1996 section 406 (a), in turn, refers to a "needy child," without reference to a payment standard. Reference to the need standard thus flows directly from the words of the statute. The IV-E program has never interpreted the reference to receipt of aid, in section 472 (a)(4), as excluding from foster care eligibility a needy child who did not or might not have actually received AFDC because of the payment standard.

Section 472 of the Social Security Act refers to the need standard at the outset, and does not subsequently distinguish between the need and payment standards; moreover, there is no such distinction recognized in the IV-E regulations. Consistent with that framework, the reference to receipt of aid in section 472 (a)(4) has been consistently understood to mean eligibility in accordance with the need standard.

Furthermore, when section 472 (a)(4) states: "received aid...in or for the month in which court proceedings leading to the removal...from the home were initiated," it is not using those words as an eligibility requirement but rather, referring to the point in time when the child meets the appropriate eligibility standards. Thus, sections 472 (a)(4)(A) and (B) are understood to refer to the times when the child met the 406 (a) standards.

- **Source/Date:** ACYF-CB-PIQ-96-01 (10/8/96)
- **Legal and Related References:** Social Security Act – sections 402, 406, 407 (as in effect on July 16, 1996) and 472 (a)(4); 45 CFR 1356.60 and 233.20 (a)

Question: May the income of a foster care child be pro-rated among the siblings who are placed in the same living arrangement with that child? May resources considered similarly in the same situation? In other words, may the children be considered an assistance group or must each child be a separate assistance unit?

Answer: Each child in foster care, whether placed alone or in the same foster care facility as his or her siblings, is considered a separate unit for purposes of determining eligibility for title IV-E foster care.

Only income that is actually received by a child in foster care is counted as available to meet the child's needs and the income and resources of the foster child would not be considered as available to siblings placed or living in the same foster home.

- **Source/Date:** ACYF-CB-PIQ-86-03 (5/9/86)
- **Legal and Related References:** Social Security Act – sections 406 (a) and 407 (as in effect on July 16, 1996); 45 CFR 233.90

Question: If, under a waiver pursuant to section 1115 (a) of the Social Security Act (an 1115 (a) waiver), the State denied benefits to a child who would otherwise meet the requirements of the Aid to Families with Dependent Children (AFDC) program, would that child then be ineligible for title IV-E foster care maintenance or adoption assistance payments, should that child come into State care?

Answer: No. A State's 1115 (a) waiver of AFDC requirements does not affect eligibility for title IV-E foster care maintenance or adoption assistance payments. Regardless of whether the rules and provisions of a State's section 1115 (a) waiver broaden or restrict AFDC eligibility, those waiver rules shall not be applied in making title IV-E eligibility determinations.

- **Source/Date:** ACYF-CB-PIQ-96-02 (12/12/96)
- **Legal and Related References:** Social Security Act – section 1115

Question: Pursuant to the provisions of the Foster Care Independence Act of 1999, Section 472 (a) of the Social Security Act was amended to permit an increase in the value of resources allowable for title IV-E eligibility to \$10,000. What is the effective date of this amendment?

Answer: The effective date is December 14, 1999.

- **Source/Date:** Questions and Answers on the Chafee Foster Care Independence Program
- **Legal and Related References:** Social Security Act – section 472(a)

Question: Should a State include Temporary Assistance for Needy Families (TANF) payments as unearned income when determining whether a child meets the Aid to Families with Dependent Children (AFDC) requirements in effect on July 16, 1996 for title IV-E eligibility purposes?

Answer: No. As the Title IV-A program, TANF should not be counted as income in determining Title IV-E eligibility.

- **Source/Date:** 06/09/04
- **Legal and Related References:** Section 472 of the Social Security Act.

LEGAL DOCUMENTATION

8.3A.6 TITLE IV-E, Foster Care Maintenance Payments Program, Eligibility, Contrary to the welfare

Question: Do you consider an emergency order (sometimes referred to as a "pick-up order" or "ex-parte order") as the first court ruling for the purpose of meeting the contrary to the welfare requirements?

Answer: We have made no distinction about the type of order in which the contrary to the welfare determination is required. Such a determination must be made in the very first court order pertaining to the child's removal from home. If the emergency order is the first order pertaining to a child's removal from home, then the contrary to the welfare determination must be made in that order to establish title IV-E eligibility.

- **Source/Date:** Preamble to the Final Rule (65 FR 4020) (1/25/00)
- **Legal and Related References:** 45 CFR 1356.21 (c)

Question: For purposes of meeting the section 472 (a)(1) eligibility requirement, must a temporary detention order include "contrary to the welfare" language or is it possible to consider a later delinquency adjudication order or dependency adjudication order as the removal order?

Answer: The statute requires that the "removal" from the home must occur as the result of a judicial determination to the effect that continuation therein would be contrary to the child's welfare.

Therefore, such a determination must be made in the order that results in the removal of the child from the home. Since the child has already been removed from his home and is in detention as the result of a temporary detention order, the later hearing order only sanctions that removal. A child would remain ineligible during the entire foster care placement if the "contrary to the welfare" determination is not made at the time of the temporary detention order.

- **Source/Date:** ACYF-CB-PIQ-91-03 (4/3/91)
- **Legal and Related References:** Social Security Act - section 472 (a)(1)

Question: A child is ineligible for an entire foster care episode for failure to satisfy the contrary to the welfare requirements. Please explain the rationale for this position.

Answer: The contrary to the welfare determination is a critical statutory protection and a criterion for establishing title IV-E eligibility. Once a child is removed from home, the State cannot go back and "fix" an inappropriate removal. If a child's removal from home is not based on a judicial determination that it was contrary to the child's welfare to remain in the home, the child is ineligible for title IV-E funding for the entire foster care episode subsequent to that removal because there is no opportunity to satisfy this eligibility criterion at a later date. The same does not hold true for all other eligibility criteria. For example, judicial determinations regarding reasonable efforts to finalize a permanency plan, placement in a licensed foster family home or child care institution, and State agency responsibility for placement and care are all title IV-E eligibility criteria that can be reestablished if lost or established at a later time if missing at the beginning of a foster care episode. This is not the case with the contrary to the welfare determination.

- **Source/Date:** Preamble to the Final Rule (65 FR 4020) (1/25/00)
- **Legal and Related References:** 45 CFR 1356.21 (c)

Question: Court orders that sentence a child to a juvenile detention facility often include language which differs from that in a dependency order resulting in a foster care placement. Does language in a detention order indicating that the child is a "threat to himself or the community" meet the requirement in section 472 regarding "contrary to the welfare?"

Answer: A court order indicating that the child is a threat to himself satisfies the requirement of a determination that remaining in the home would be contrary to the child's welfare. However, if the court order indicates only that the child is a threat to the community, such language would not satisfy the requirement for a determination that continuation in the home would be contrary to the child's welfare.

- **Source/Date:** ACYF-CB-PIQ-91-03 (4/3/91)
- **Legal and Related References:** Social Security Act - section 472 (a)(1)

Question: If a temporary detention order states that the child is to be detained until sentencing because there is reason to believe he would run away, would this satisfy the requirement for a determination regarding "contrary to the welfare?"

Answer: No. This language could not be construed to mean that to continue in the home would be "contrary to the (child's) welfare." It is important to remember that the judicial determinations required for title IV-E eligibility were intended to ensure that children were not removed from their homes unnecessarily. In juvenile justice procedures, where children are removed for correctional purposes, the

courts must determine that continuation in the home would be contrary to the child's welfare if title IV-E eligibility is to be established.

- **Source/Date:** ACYF-CB-PIQ-91-03 (4/3/91)
- **Legal and Related References:** Social Security Act - section 472 (a)(1)

Question: Our State presently petitions the court for protective supervision of a child (not legal custody) with the right to place the child. The petition is based on the child's being within the jurisdiction of the court on the basis that the child is abused, neglected, or is beyond the control of the parents. If the State is given protective supervision with the right to place, it is based on that petition. If placement becomes necessary, placement is made without the State needing to return to court for an amended order. In some situations, the child is already in placement under an immediate physical custody order of the court. Is the granting of a State's petition for protective supervision with the right to place and the subsequent placement of the child sufficient to make an otherwise eligible child qualify for foster care payments under title IV-E?

Answer: No. The Social Security Act, at section 472 (a)(1), requires that the removal of a child from the home be the result of a voluntary placement agreement or a judicial determination to the effect that continuation therein would be contrary to the welfare of the child.

If the court grants protective supervision responsibility to the State agency and leaves to that agency the option to remove the child from the home at a later time, the requirement in section 472 (a)(1) for a judicial determination has not been met. Although there are no Federal requirements as to the exact language of court orders, the Act requires a judicial determination to the effect that continuation in the child's home would be contrary to his welfare. The granting of a petition for protective supervision with the right to place the child is not sufficient to meet this requirement.

At the time of removal, if a judicial determination is made that amends the earlier order granting protective supervision that sanctions the removal and satisfies the requirements in section 472 (a)(1), the otherwise eligible child would then become eligible for title IV-E.

- **Source/Date:** ACYF-CB-PIQ-84-05 (7/5/84); ACYF-CB-PIQ-85-07 (6/25/85)
- **Legal and Related References:** Social Security Act - section 472

Question: After a dependency petition is filed, the court finds reasonable grounds to believe a child is dependent and would be endangered in his or her home and enters a temporary shelter order causing the child to be taken in to custody. The child is then placed in foster care by the State agency. Does this temporary shelter order constitute a "judicial determination" as required for a State to receive Federal financial participation (FFP) in the costs of the child's foster care maintenance under the title IV-E program? May FFP begin from the date of the shelter order, if the order is not rescinded or otherwise revised so that it no longer supports the removal of the child from the home?

Answer: A temporary shelter care order that meets the requirements of a "judicial determination" would permit the authorization of FFP as of the date of the shelter care order, provided all other eligibility requirements are met. As to the requirements of a "judicial determination," the essential element is that the court order (temporary or dispositional) for removal of the child from the home is based on a determination that continuation therein would be contrary to the welfare of the child.

It is correct that FFP would have to be discontinued if at a subsequent hearing the court order was rescinded or revised so that it no longer supported the removal of the child from the home. It is also correct that the date the judicial proceedings are initiated is not the date the judicial determination is made, if the initiated action is only a petition or summons, unless the judicial determination is made on the same date.

A State may claim Federal matching for costs of children placed involuntarily in foster care only after judicial determinations are made (1) that continuation in the home would be contrary to the welfare of

the child and (2) that reasonable efforts had been made to prevent the removal of the child from the home. Once the court order is issued (either a temporary or dispositional order), FFP may be claimed only from the first day the child is in the foster home; provided all other title IV-E eligibility criteria are satisfied.

- **Source/Date:** ACYF-CB-PIQ-82-03 (1/29/82)
- **Legal and Related References:** Social Security Act - section 472

8.3A.7 TITLE IV-E, Foster Care Maintenance Payments Program, Eligibility, Documentation of judicial determinations

Question: Please explain the rationale for the policy of requiring judicial determinations to be explicit, made on a case-by-case basis, and so stated in the court order and provide guidance on how to satisfy this requirement.

Answer: The basis for this policy can be found in the legislative history of the Federal foster care program. The Senate report on the bill that became Public Law 96-272 characterized the required judicial determinations as "... important safeguard[s] against inappropriate agency action..." and made clear that such requirements were not to become "... a mere pro forma exercise in paper shuffling to obtain Federal funding..." (S. Rept. No. 336, 96th Cong., 2d Sess. 16 (1980)). We concluded, based on our review of States' documentation of judicial determinations over the past years, that, in many instances, these important safeguards had become precisely what Congress was concerned that they not become.

States have a great deal of flexibility in satisfying this requirement. For example, the court order may reference the facts of a court report, related psychiatric or psycho-social report, or sustained petition as a mechanism for demonstrating that judicial determinations are made on a case-by-case basis. If the State can demonstrate that such determinations are made on a case-by-case basis through a checklist then that is acceptable also.

- **Source/Date:** Preamble to the Final Rule (65 FR 4020) (1/25/00)
- **Legal and Related References:** 45 CFR 1356.21 (d); S. Rept. No. 336, 96th Congress, 2nd Session 16 (1980)

Question: Some States do not transcribe court hearings; rather, court clerks take "bench notes" during the course of a hearing. Are these "bench notes" acceptable for purposes of meeting the documentation requirements of 45 CFR 1356.21(d)?

Answer: No. Bench notes do not constitute acceptable documentation of judicial determinations. In accordance with the regulations, the only acceptable alternative documentation of judicial determinations, absent language in a court order, is a transcript of the court proceedings. We recommend that the State agency collaborate closely with the judicial system to assure that the necessary judicial determinations are made and appropriately recorded for children who must be removed from their homes.

- **Source/Date:** Questions and Answers on the Final Rule (65 FR 4020) (1/25/00)
- **Legal and Related References:** 45 CFR 1356.21 (d)

8.3A.9 TITLE IV-E, Foster Care Maintenance Payments Program, Reasonable efforts

Question: What is the statutory basis for treating a judicial determination that the State made reasonable efforts to prevent the child's removal from his/her home, to reunify the child and family, and to make

and finalize an alternate permanent placement when the child and family cannot be reunited as title IV-E eligibility criteria?

Answer: Section 472 (a)(1) of the Social Security Act (the Act) contains two eligibility criteria. The first pertains to the child's removal from home. Such removal must be based on a voluntary placement agreement or a judicial determination that it was contrary to the child's welfare to remain at home. The second eligibility criterion requires a judicial determination that the State made reasonable efforts of the type described in section 471 (a)(15) of the Act. Section 471 (a)(15) of the Act requires the State agency to make reasonable efforts to prevent the child's removal from his/her home, to reunify the child and family, and to make and finalize an alternate permanent placement when the child and family cannot be reunited. The requirements for judicial determinations regarding reasonable efforts are title IV-E eligibility criteria. If the eligibility criteria are not satisfied, the child is not eligible for title IV-E funding.

- **Source/Date:** Preamble to the Final Rule (65 FR 4020) (1/25/00)
- **Legal and Related References:** Social Security Act - sections 471 (a)(15) and 472 (a)(1); 45 CFR 1356.21 (b) and (d)

Question: May a State receive an extension to the time frames prescribed in the regulation for obtaining judicial determinations regarding reasonable efforts to address the problem of continuances?

Answer: We are sympathetic to the issue of continuances. However, we believe that the need for timely judicial determinations is more appropriately addressed by building capacity through training judges and attorneys rather than extending the time frames for satisfying title IV-E eligibility criteria. Therefore, no extensions may be granted.

- **Source/Date:** Preamble to the Final Rule (65 FR 4020) (1/25/00)
- **Legal and Related References:** 45 CFR 1356.21 (b)

Question: May a checklist be used to document the reasonable efforts requirements?

Answer: The regulations, at section 1356.21 (d), requires judicial determinations to be explicit, and made on a case-by-case basis. This requirement is made to assure that the individual circumstances of each child before the court are properly considered in making judicial determinations. If the State can demonstrate that such determinations are made on a case-by-case basis and documented through a checklist, that will be considered acceptable in a title IV-E foster care eligibility review.

- **Source/Date:** Questions and Answers on the Final Rule (65 FR 4020) (1/25/00)
- **Legal and Related References:** 45 CFR 1356.21 (d)

8.3A.9a TITLE IV-E, Foster Care Maintenance Payments Program, Eligibility, Reasonable efforts, to achieve a permanency plan

Question: We understand that the timing for obtaining the initial judicial determination related to making reasonable efforts to finalize/achieve a permanency plan is based on the date the child is considered to have entered foster care. Are subsequent judicial determinations to be obtained based on the date the child is considered to have entered foster care or within 12 months of the date the judicial determination actually was obtained?

Answer: The statute requires that the judicial determination of reasonable efforts to finalize/achieve a permanency plan be obtained no later than 12 months from the date the child is considered to have entered foster care and at least once every 12 months thereafter while the child is in foster care. Accordingly, States must use the date of the last judicial determination for a child to determine the date the next one is due. In no circumstance may the interval between these judicial determinations exceed 12

months. If a judicial determination regarding reasonable efforts to finalize a permanency plan is not made within the time frame prescribed above, the child becomes ineligible under title IV-E at the end of the month in which the judicial determination was required to have been made and remains ineligible until such a determination is made.

Although the permanency hearing may serve as the mechanism for obtaining the judicial determination of reasonable efforts to finalize/achieve a permanency plan, there is no requirement that the judicial determination be made at a permanency hearing. The court may make such a judicial determination, based upon evidence presented to it by the State, without a formal hearing.

- **Source/Date:** 06/09/04
- **Legal and Related References:** Section 471(a)(15)(B) of the Social Security Act, 45 CFR 1355.20 and 1356.21(b)(2).

8.3A.9b TITLE IV-E, Foster Care Maintenance Payments Program, Reasonable efforts, to prevent a removal

Question: Does the initial "reasonable efforts to prevent removal" determination affect the child's initial eligibility for title IV-E foster care payments, or does this determination constitute FFP criteria for claiming foster care maintenance payments?

Answer: Pursuant to the regulations at section 1356.21(b) (1) (ii), judicial determinations regarding reasonable efforts to prevent removal must be made in accordance with the criteria and time frames specified therein, or the child is not eligible under the title IV-E foster care maintenance payments program for the duration of that stay in foster care.

- **Source/Date:** Questions and Answers on the Final Rule (65 FR 4020) (1/25/00)
- **Legal and Related References:** Social Security Act - section 472 (a); 45 CFR 1356.21 (b)

Question: When must the "reasonable efforts to prevent removal" criteria be met; in the initial court order that removes the child or 60 days from the date the child is removed?

Answer: Pursuant to 45 CFR 1356.21 (b)(1)(i), the State agency must obtain a judicial determination that it either made or was not required to make reasonable efforts to prevent a child's removal from the home no later than 60 days from the date the child was removed from the home. However, the State agency may obtain such a determination earlier than 60 days from the date of removal.

- **Source/Date:** Questions and Answers on the Final Rule (65 FR 4020) (1/25/00)
- **Legal and Related References:** Social Security Act - section 471 (a)(15); 45 CFR 1356.21 (b)

Question: Title IV-E eligibility for an entire foster care episode is prohibited if the reasonable efforts to prevent removal requirements are not satisfied. Please explain the rationale for this policy.

Answer: The requirement for the State to make reasonable efforts to prevent removals is a fundamental protection under the Social Security Act and one of several criteria used in establishing title IV-E eligibility. From both a practice and an eligibility perspective, it is impossible for the State to provide efforts to prevent the removal of a child from home after the fact.

From a practice perspective, the removal of a child from the home, even temporarily, makes a profound impact on a family that cannot be undone. If the child is returned after services have been delivered, or even immediately, the State has reunified the family, not prevented a removal.

The statute requires that title IV-E eligibility be established at the time of a removal. If the State does not make reasonable efforts to prevent a removal or fails to obtain a judicial determination with respect to such efforts, the child can never become eligible for title IV-E funding for that entire foster care episode because there is no opportunity to establish eligibility at a later date.

- **Source/Date:** Preamble to the Final Rule (65 FR 4020) (1/25/00)
- **Legal and Related References:** 45 CFR 1356.21 (b)(1)

8.3A.13 TITLE IV-E, Foster Care Maintenance Payments Program, Eligibility, Voluntary placement agreements

Question: If a State fails to obtain the necessary judicial determination within the first 180 days of a voluntary placement, can the case be reopened when a judicial hearing is convened or does the child lose all further benefits of the title IV-E program during that period of placement?

Answer: The case may not be reopened. The judicial determination must be made within the first 180 days of placement. Section 472 (e) of the Social Security Act states that no Federal payment may be made for a child removed from his or her home pursuant to a voluntary placement agreement and who remains in voluntary placement in excess of 180 days, unless there has been a judicial determination within the first 180 days of such placement to the effect that the placement is in the best interests of the child.

According to the legislative history, this provision was included in Public Law 96-272 in order to allow for short term emergency placements but provide the child with the protection of a court review if the placement became prolonged.

- **Source/Date:** ACYF-CB-PIQ-85-09 (10/10/85)
- **Legal and Related References:** Social Security Act - sections 472 (d) and (e)

Question: In the event that a court hearing date has been set within the first 180 days of a voluntary placement, but no determination made, may a pre-approved continuance hearing date deem the child eligible up to the continuance date?

Answer: No. Although the applicable title IV-E requirement at section 472 (e) is stated in terms of a judicial determination, it does not specifically require a court hearing. If the determination is not made within 180 days of placement, whether or not a hearing is held, Federal financial participation may not continue.

- **Source/Date:** ACYF-CB-PIQ-85-09 (10/10/85)
- **Legal and Related References:** Social Security Act - sections 472 (d) and (e)

Question: A State places a child into foster care pursuant to a voluntary placement agreement but does not have the voluntary placement provision in its State Plan and, thus, does not claim Federal financial participation (FFP) for the child. Can this placement later be considered a judicial removal and FFP be claimed from that time forward if there is a petition to the court within six months of the time the child had last been living with the parent(s) and subsequent judicial determinations are made regarding "contrary to the welfare" and "reasonable efforts"?

Answer: No. The statute allows FFP for otherwise eligible children who are removed from their homes either pursuant to a voluntary placement agreement or as the result of judicial determinations regarding "contrary to the welfare" and "reasonable efforts." It is a State option whether to claim FFP for voluntary placements. For a State to be eligible for Federal reimbursement for voluntary placements, it must meet the requirements of section 472 of the Social Security Act and must have such provision in its title IV-E State Plan. In States that accept voluntary placements, but do not meet the requirements for claiming FFP, such placements are ineligible for FFP during the entire stay in foster care. The fact that a petition is filed within six months of the removal and the required subsequent judicial determinations are obtained does not change the nature of the removal from voluntary to judicial.

If, however, a State revises its title IV-E State Plan and becomes eligible to claim FFP for voluntary placements, it may also begin to claim FFP for any eligible child who had previously been removed pursuant to a voluntary placement agreement if there had been a judicial determination regarding "best interests" within 180 days of the child's placement.

- **Source/Date:** ACYF-CB-PIQ-89-03 (7/24/89)
- **Legal and Related References:** Social Security Act - sections 472

Question: If a State, which is claiming Federal financial participation (FFP) for voluntarily placed children, misses the requirement for a judicial determination within 180 days of placement that such placement is in the best interests of the child, but petitions the court within the six-month timeframe set forth in section 472(a)(4)(B)(ii) of the Social Security Act, can the State consider this a judicial removal, once determinations are made concerning "contrary to the welfare" and "reasonable efforts"?

Answer: No. The State has been claiming FFP under the Federal voluntary placement program for 180 days. In this case, the State has failed to meet the requirement for continuing FFP that there must be a judicial determination within 180 days to the effect that the placement is in the best interests of the child. The fact that the State petitioned the court within six months of the time the child last resided with a relative and later obtained the judicial determinations required for judicial removals would not change the nature of that removal from voluntary to judicial.

- **Source/Date:** ACYF-CB-PIQ-89-03 (7/24/89)
- **Legal and Related References:** Social Security Act - sections 472; 45 CFR 1356.22

Question: May a State develop a voluntary placement agreement that would allow a parent to retain custody of his or her child and allow the State to claim Federal financial participation under the title IV-E foster care maintenance payments program on behalf of an otherwise eligible child?

Answer: Yes. As long as the State retains placement and care responsibility for the child, the fact that the voluntary placement agreement allows the parent to retain custody of the child does not impair the child's eligibility for title IV-E foster care maintenance payments. Placement and care responsibility means that the State agency is legally accountable for the day-to-day care and protection of the child in foster care. Responsibility for placement and care allows the State agency to make placement decisions about the child, such as where the child is placed and the type of placement most appropriate for the child.

The State's placement and care responsibilities under section 472(a)(2) of the Social Security Act must be unencumbered in order to claim Federal financial participation for title IV-E foster care costs. To the extent that a State's definition of custody contradicts or in any manner limits the agency's placement and care discretion, such children would not be eligible for title IV-E foster care maintenance payments.

- **Source/Date:** 06/09/04
- **Legal and Related References:** Section 472(f) of the Social Security Act, CWPM section 8.3A.12.

APPROVALS

8.1B TITLE IV-E, Administrative Functions/Costs, Allowable Costs - Foster Care Maintenance Payments Program

Question: May the State claim a title IV-E foster care maintenance payment for an allowable provider that covers the entire month if a child is temporarily absent for a portion of the month? For example, the child has run away, goes on a weekend home visit, or is hospitalized for medical treatment during some part of the month.

Answer: Yes. The State may provide a full month's title IV-E foster care maintenance payment to the licensed provider if the brief absence does not exceed 14 days and the child's placement continues with the same provider. Otherwise, the State must prorate its claims if the child is absent from the placement for more than a reasonable brief period.

- **Source/Date:** 1/29/2007
- **Legal and Related References:** Social Security Act – section 472

8.3C.5 TITLE IV-E, Foster Care Maintenance Payments Program, State Plan/Procedural Requirements, Trial home visit

Question: What is the regulatory definition of a trial home visit?

Answer: There is no regulatory definition of the term "trial home visit," as it is within the State's discretion to define. We do not think that it would be appropriate for us to develop a regulatory definition. We also do not believe that we could develop a definition that would be inclusive of the variety of State policies on trial home visits or that a definition would be helpful. In practice, a trial home visit is intended to be a short term option in preparation for returning the child home permanently.

- **Source/Date:** Preamble to the Final Rule (65 FR 4020) (1/25/00)
- **Legal and Related References:** 45 CFR 1356.21 (e)

Question: Often, courts do not specify time periods for trial home visits for children in foster care. If a court does not specify a time period, should we assume it cannot be longer than six months without having to re-establish eligibility for title IV-E foster care payments?

Answer: Pursuant to 45 CFR 1356.21 (e), six months is the outside limit for a trial home visit without having to re-establish title IV-E eligibility if the child re-enters foster care, unless there is a court order extending the trial home placement beyond six months. If there is a court order extending the trial home visit beyond six months, and the trial home visit does not exceed the time frame in the court order, the child retains title IV-E eligibility upon returning to foster care following the trial home visit.

- **Source/Date:** Question and Answers on the Final Rule (65 FR 4020) (1/25/00)
- **Legal and Related References:** 45 CFR 1356.21 (e)

Question: Would a continuance of a hearing scheduled to address the trial home visit satisfy the requirement that for title IV-E funding to continue, a court must order a longer visit?

Answer: No. The regulations establish a six-month outer limit for a trial home visit, except when a court orders a longer visit. A court continuance of a hearing regarding the trial home visit does not satisfy this requirement.

- **Source/Date:** Preamble to the Final Rule (65 FR 4020) (1/25/00)
- **Legal and Related References:** 45 CFR 1356.21 (e)

PARENTAL DEPRIVATION

8.4A TITLE IV-E, General Title IV-E Requirements, AFDC Eligibility

Question: Under the following circumstances, is the child eligible for title IV-E foster care? Aid to Families with Dependent Children (AFDC) eligibility for a child is based on incapacity of the parent. In the month following removal, the parent is no longer considered incapacitated. By the time of the twelve

month eligibility redetermination, the family is no longer eligible for AFDC. What is the title IV-E status of the child?

Answer: The child is not eligible for title IV-E foster care unless the AFDC deprivation requirement is met. Incapacity of a parent is one of the reasons a child may be determined to be deprived of parental support or care under AFDC (reference section 406 (a) and 407 of the Act (as such sections were in effect on July 16, 1996) and 45 CFR 233.90 (c)(1)(i)). Eligibility ends when the parent is no longer incapacitated, unless a different reason for deprivation has emerged, such as death or absence from the home.

- **Source/Date:** ACYF-CB-PIQ-85-07 (6/25/85)
- **Legal and Related References:** Social Security Act - sections 406 (a) and 407 (as in effect on July 16, 1996); 45 CFR 233.90

Question: When continued deprivation cannot be substantiated after initial eligibility has been established because the whereabouts of the parent from whom the child was removed cannot be determined, is the child no longer eligible under title IV-E?

Answer: The inability to determine the whereabouts of the parent from whose home the child was removed does not preclude continuing eligibility for title IV-E foster care maintenance payments.

At the time of the twelve month redetermination of eligibility, both need and deprivation must be documented. Deprivation of parental support or care may be based on the death, continued absence from the home, physical or mental incapacity of a parent, or at State option, unemployment of the principal wage earner. If the whereabouts of the parent from whose home the child was removed cannot be determined by the State agency at the time of redetermination and documentation in the case record verifies the efforts made to locate the parent(s), then deprivation may be established based on continued absence from the home.

However, the continued absence of the parents from the home must be accompanied by factors such as set forth in 45 CFR 233.90 (c)(1)(iii): "...When the nature of the absence is such as either to interrupt or to terminate the parent's functioning as provider of maintenance, physical care, or guidance for the child, and the known or indefinite duration of the absence precludes counting on the parent's performance of the function of planning for the present support or care of the child."

While the specific circumstances of either of the parents may not be known to the agency, documentation of their continued absence is required in order to redetermine the child's eligibility for title IV-E foster care. The method for substantiation of the parents' absence is left to State policy and procedure.

If the child had been removed from the home of a relative rather than from the parent(s)' home, the relative's home is reviewed at the time of redetermination to establish continuing deprivation of parental support and care. If either or both parents are not in that household at redetermination, then the child is so deprived, based on continued absence of the parent(s) from that home.

On the other hand, the continued absence of parents from the home cannot be used as basis for determining that a child is initially deprived of parental support or care, in cases where there is an inability to document that the child had been living in the home of any parent or relative, e.g., in the case of an abandoned child.

- **Source/Date:** ACYF-CB-PIQ-85-07 (6/25/85)
- **Legal and Related References:** Social Security Act - sections 406 (a) and 472 (a); 45 CFR 233.90

8.3A.10 TITLE IV-E, Foster Care Maintenance Payments Program, Eligibility, Redeterminations

Question: During the time the child is receiving title IV-E foster care payments, the parental rights of his parents are terminated. The child is subsequently moved into a residential care facility which is not eligible to receive foster care payments and the title IV-E case is discontinued. Later, he is again placed into a foster home and reapplication for title IV-E foster care is made. In considering eligibility for this reapplication, the deprivation at the time of court action, found initially and verified under the old foster care case, can be utilized. However, to meet the requirement of "continues to be eligible," must deprivation with regard to the birth parents again be established or may the termination of parental rights be used to constitute deprivation?

Answer: If the child has not returned to his own home and has been continuously in a foster care status since removal from the home (whether or not the facility is eligible to receive payments under title IV-E), a redetermination of eligibility would be appropriate at the time he returned to a facility eligible for Federal financial participation (FFP).

A redetermination of the deprivation factor at that time would consist of a confirmation that the conditions at the time of removal from the home continued to exist or that termination of parental rights (TPR) had occurred. In the latter case, the TPR would, from that point and throughout this course of foster care, become the reason for continuing eligibility in terms of the deprivation factor.

If, however, the child is not continuously in foster care status and returns to the home of a relative that is considered to be his own home, then a subsequent re-entry into the foster care system requires a new (initial) determination of all eligibility factors.

In such a situation, where the child was living in the home of another relative after termination of parental rights and was later removed from the home of that relative, deprivation would then be based upon the absence of the parent(s) from the home of the relative, rather than TPR. (See section 406(a) (as in effect on July 16, 1996)).

- **Source/Date:** ACYF-CB-PIQ-86-03 (5/9/86)
- **Legal and Related References:** Social Security Act - sections 406 (a) and 407 (as in effect on July 16, 1996); 45 CFR 233.90

8.4A TITLE IV-E, General Title IV-E Requirements, AFDC Eligibility

Question: How does the State agency determine need and deprivation to establish a child's eligibility for title IV-E adoption assistance?

Answer: If a child's eligibility for title IV-E adoption assistance is based upon his or her eligibility for Aid to Families with Dependent Children (AFDC) as a dependent child, the State must determine that the child would have been AFDC-eligible in the home from which s/he was removed. To meet the AFDC criteria, the child must be both a needy child and a child who is deprived of parental support or whose principal wage earner parent is unemployed. Need exists in the child's home if the resources available to the family are below \$10,000 and meets the income test (see section 8.4B Q/A #18 of the Child Welfare Policy Manual). Deprivation exists in the home in situations where there is death of a parent, an absent parent, or a parent with a mental or physical incapacity to the extent that the parent cannot support or care for the child. At the point of the removal of a child from his or her home, a termination of parental rights (TPR) alone is not proof that deprivation exists. The factors noted here must be established based on the circumstances in that home. If the child meets these AFDC criteria at removal, no further AFDC eligibility determination is needed for adoption assistance.

- **Source/Date:** ACYF-CB-PA-01-01 (1/23/01); 7/17/2006
- **Legal and Related References:** Social Security Act - section 473 (a)(2); section 8.4B Q/A #18 of the Child Welfare Policy Manual).

Question: What is the definition of unemployed parent for purposes of completing the AFDC portion of a title IV-E eligibility determination?

Answer: The Administration for Children and Families (ACF) and the Centers for Medicaid and Medicare Services (CMS) amended the definition of unemployed parent at 45 CFR 233.101(a)(1) in 1998 in response to the replacement of the former AFDC program with the Temporary Assistance for Needy Families (TANF) program. Each State was required to establish a reasonable standard for measuring unemployment in order to determine whether an individual qualified for benefits under TANF or Medicaid and whether a child met the AFDC portion of title IV-E eligibility. The amended regulation specifically permits States to consider hours of work, dollar amounts earned, and family size in establishing the reasonable standard of unemployment.

- **Source/Date:** 6/23/03
- **Legal and Related References:** Public Law 104-193; 45 CFR 233.101(a)(1); 63 FR 42270-42275, August 7, 1998.

Question: One of the title IV-E eligibility requirements under section 472(a) of the Social Security Act (Act) is that a child must have been eligible for the former Aid to Families with Dependent Children (AFDC) program. As such, the State must determine that the child is a dependent child based on the State title IV-A plan in effect as of July 16, 1996. What process must States use to determine whether a child is a "needy child" under the former AFDC program, as described in former section 406(a) of the Act?

Answer: The AFDC program required that a child meet eligibility requirements related to both financial need (i.e., a "needy child") and deprivation of parental support. In response to the specific question, this answer addresses only the requirements for establishing that a child meets the requirements related to financial need under AFDC.

For initial eligibility determinations, the State must apply the former AFDC program's two-step income test to establish whether a child would have been considered a "needy child" under the State's title IV-A plan in effect on July 16, 1996. In addition to the income test, the State must apply a test of resources. Both the two-step income and resources tests must be applied, in accordance with 45 CFR 233.20.¹

Prior to the passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, each State set its own AFDC need standard to use in determining eligibility for the program. The term "AFDC need standard" refers to the amount of money a State determined that a particular size family needed to subsist. For title IV-E purposes, the State's need standard as of July 16, 1996, (disregarding any Section 1115(a) waivers that may have been in effect on that date) is the amount that provides the basis for both steps in the initial income test portion of the AFDC eligibility determination process.

The two-step income test to determine financial need under AFDC to be conducted in accord with Federal requirements and the State plan as in effect on July 16, 1996, is as follows (see 45 CFR 233.20(a)(3)(xiii) and 45 CFR 233.20(a)(3)(ii)(F)):

Step One of the Income Test-Gross Income Limitation: The State determines if the family's gross income is less than 185 percent of the State's AFDC need standard, after applying appropriate disregards.² If the family's gross income is more than 185 percent of the State's AFDC need standard, the child would have been ineligible for the program and, thus, is not eligible for title IV-E. If the family's gross income does not exceed 185 percent of the State's AFDC need standard, the State proceeds to the second step to continue the process of determining if a child is a needy child and would have been eligible for AFDC.

Step Two of the Income Test-Determination of Need: For this second step, the State compares the family's income, after applying further appropriate disregards, to 100 percent of the State's AFDC need standard, the same need standard used in step one. If the family's income is in excess of 100 percent of the State's need standard, the child would not have been eligible for AFDC and, thus, is not eligible for

title IV-E. If the family's income does not exceed 100 percent of the need standard, the child would have met the AFDC income test for eligibility.

In addition to applying the two-step income test to determine if a child would have been considered a "needy child" under AFDC, the State must determine whether the child's family has resources under \$10,000 in value, after appropriate disregards.³ Both the income and resources tests must be applied to the child and family in the removal home to determine initial eligibility for AFDC.

Redeterminations of title IV-E eligibility: Under AFDC, the two-step income test also applied to eligibility redeterminations. Since the 1980s, however, ACF has had policies in place that allow a State to use a slightly different process to redetermine a child's AFDC eligibility for the purpose of title IV-E. As stated in the Child Welfare Policy Manual at 8.4A #6, a State may choose to apply only the gross income limitation, which compares the child's income against 185 percent of the need standard. A State also may substitute a child's foster care need standard (formerly known as the "foster care payment rate") for the AFDC need standard when redetermining a child's eligibility. This policy remains in effect. Regardless of the income test the State applies, the \$10,000 resources test also must be applied to redetermine a child's eligibility.

Under the AFDC foster care program, before the creation of title IV-E, a State used a child's foster care rate (referred to as the foster care need standard) as the need standard for redetermining the child's eligibility, rather than using the AFDC need standard. When AFDC was replaced by the Temporary Assistance for Needy Families (TANF) program in 1996, ACF issued policy (PIQ 96-01, Question #2) directing States to use the AFDC need standard for eligibility determinations, but did not explicitly prohibit the use of a child's foster care need standard for making redeterminations. Accordingly, States may use either the child's foster care need standard or the AFDC need standard for making redeterminations unless the Department issues a regulation that directs them otherwise.

¹ The two-step process has been in place since 1981. See the 1994 Green Book, 14th Edition, July 15, 1994, Section 10 for more details on the two-step process.

² The gross income limitation -the first step of the process- was increased from 150 percent to 185 percent of the need standard by the Deficit Reduction Act of 1984 (Public Law 98-369) and implemented through regulation at 45 CFR 233.20(a)(3)(xiii).

³ Public Law 106-169 increased the resource limit to \$10,000. See the Child Welfare Policy Manual at 8.4A #15 for more information.

- **Source/Date:** March 16, 2006
- **Legal and Related References:** Social Security Act – Section 472(a), Sections 406(a) and 407 (as in effect on July 16, 1996); 45 CFR 233.20(a)(3)(xiii); 45 CFR 233.20(a)(3)(ii)(F); 45 CFR 233.20(a)(2); 45 CFR 233.20(a)(2)(v)

Question: Under the Aid to Families with Dependent Children (AFDC) regulations, certain work expense deductions and disregards are allowable in determining eligibility. In determining the amount of a child's earnings, is the AFDC budgeting procedure to be followed or are States allowed to establish a separate set of budgeting procedures for title IV-E?

Answer: The AFDC regulations and procedures (45 CFR 233.20) are applicable in the title IV-E foster care maintenance payments program. In determining the eligibility of a child who is receiving foster care benefits under title IV-E, the amount of the child's gross income should be applied to 185% of the need standard, and eligibility would continue in terms of need as long as his gross income did not exceed that point. However, in applying the 185% test when determining initial eligibility, the State has the option to disregard the earned income of a dependent child who is a full time student. Once the child is receiving payments under the title IV-E program, the earned income of the child who is a full time student is disregarded indefinitely (402 (a)(8)(A)(i) and 402 (a)(8)(A)(vii)).

If a portion of the child's income is applied to the foster care maintenance cost, the State's claim for Federal financial participation should include only its share of the amount paid for foster care that has not been offset by the child's countable income.

- **Source/Date:** ACYF-CB-PIQ-85-07 (6/25/85)
- **Legal and Related References:** Social Security Act - 45 CFR 233.20

PERMANENCY HEARINGS

8.3A.9a TITLE IV-E, Foster Care Maintenance Payments Program, Eligibility, Reasonable Efforts to Finalize a Permanency Plan

Question: We understand that the timing for obtaining the initial judicial determination related to making reasonable efforts to finalize/achieve a permanency plan is based on the date the child is considered to have entered foster care. Are subsequent judicial determinations to be obtained based on the date the child is considered to have entered foster care or within 12 months of the date the judicial determination actually was obtained?

Answer: The statute requires that the judicial determination of reasonable efforts to finalize/achieve a permanency plan be obtained no later than 12 months from the date the child is considered to have entered foster care and at least once every 12 months thereafter while the child is in foster care. Accordingly, States must use the date of the last judicial determination for a child to determine the date the next one is due. In no circumstance may the interval between these judicial determinations exceed 12 months. If a judicial determination regarding reasonable efforts to finalize a permanency plan is not made within the time frame prescribed above, the child becomes ineligible under title IV-E at the end of the month in which the judicial determination was required to have been made and remains ineligible until such a determination is made.

Although the permanency hearing may serve as the mechanism for obtaining the judicial determination of reasonable efforts to finalize/achieve a permanency plan, there is no requirement that the judicial determination be made at a permanency hearing. The court may make such a judicial determination, based upon evidence presented to it by the State, without a formal hearing.

- **Source/Date:** 06/09/04
- **Legal and Related References:** Section 471(a)(15)(B) of the Social Security Act, 45 CFR 1355.20 and 1356.21(b)(2).

Question: Regarding the reasonable efforts to finalize judicial determination: Is the State required to look at the permanency plan in effect at the time the judicial determination is due to see if the court order addresses that specific plan in its reasonable efforts judicial determination?

Answer: No. The State is not required to reconcile the permanency plan in effect at the time the judicial determination is due with the reasonable efforts determination itself. In order to sustain a child's ongoing title IV-E foster care eligibility, the court must make a judicial determination of reasonable efforts to finalize a permanency plan within 12 months from the date the child is considered to have entered foster care and at least once every 12 months thereafter while the child remains in foster care. We have indicated that we will not instruct courts on the criteria they are to use to make the judicial determination. At the same time, however, we recognize the significance of the provision as it relates to moving a child toward permanency. The courts, therefore, may rule on the plan that is in effect at the time of the finding, a plan that has been in effect for a brief period of time, or the activities related to achieving permanency that took place over the prior 12 months, even if the plan had been abandoned during that 12-month period. In any event, the judicial determination should reflect the court's judgment

as to whether the agency activities that were performed during the previous 12 months were meaningful in bringing about permanency for the child.

- **Source/Date:** 7/6/05
- **Legal and Related References:** Social Security Act -- Section 471 (a)(15), 45 CFR 1356.21(b)(2), 1356.71(d)(1)(i)

8.3A.10 TITLE IV-E, Foster Care Maintenance Payments Program, Eligibility, Redeterminations

Question: We believe failure to hold a timely redetermination of title IV-E eligibility is a program issue, not an eligibility issue. Is this correct?

Answer: You are correct in your assessment that failure to hold a timely redetermination of title IV-E eligibility is a State plan issue (a program issue, as stated in your question) rather than an issue related to the eligibility of the child for title IV-E foster care maintenance payments.

Under the Aid to Families with Dependent Children (AFDC) Program, an eligibility redetermination is a State plan requirement (45 CFR 206.10 (a)(9)(iii)) and not a factor affecting the child's eligibility. While there is no statutory requirement under title IV-E concerning the frequency of eligibility redeterminations, such a procedure should be carried out periodically in order to assure that Federal financial participation is claimed properly. (Section 471 (a)(1) allows for Federal financial participation for foster care maintenance payments only in accordance with the requirements in section 472. Therefore, the State must assure that the child meets those eligibility requirements.)

ACYF has advised State agencies that an appropriate period for redetermination would be every 12 months, at which time factors subject to change, such as continued deprivation of parental support and care and the child's financial need would be reviewed and documented. However, if the State agency misses the twelve month eligibility redetermination schedule in certain cases, those cases would not be considered ineligible for Federal financial participation for that reason alone. When the eligibility review is held, however, if the child is found to have been ineligible for any prior month, no claim for Federal financial participation may be made for that month.

- **Source/Date:** ACYF-CB-PIQ-85-06 (6/5/85)
- **Legal and Related References:** Social Security Act - sections 471 and 472; 45 CFR 206.10 (a)(9)(iii)

Question: Is it permissible to allow redeterminations to be used after a break in foster care placement in those cases where there is no new court ordered removal from the home and no break in State responsibility for placement and care? Examples of situations in which redeterminations are currently being used are as follows: (a) A child in foster care goes to the State training school and then back to foster care; (b) A child in foster care goes to live with a relative (not parent) under State supervision, and then back to foster care; (c) A child in foster care goes home under State supervision without a change in court order and then returns to foster care.

Answer: The criteria to be used in determining whether an initial determination or redetermination of a child's eligibility for foster care maintenance payments under title IV-E would be required hinge on whether the child is continuously in foster care status and remains under the responsibility of the State agency for placement and care. In making this determination, the State would ask: (1) Is the child in foster care? (2) Is the original court order or voluntary placement agreement still in effect in relation to removal of the child from his home? (3) Is the child still under the responsibility of the State agency for placement and care? If all of these conditions are in effect, even though there has been a temporary interruption of the foster care placement, a redetermination of eligibility would be appropriate.

If the child is discharged from foster care and returned to his own home (the home from which he was removed), he could not be considered to be in foster care status, even if the State agency maintains a supervisory role with the child and family. If the child leaves foster care to live with a relative, the State agency would need to determine whether the child remained in foster care status or whether the home of the relative was now considered to be the child's own home. Any continuing foster care status, where the child is still under responsibility of the State agency, would indicate the need for periodic redeterminations of eligibility at regular 12 month intervals. Short trial visits to a child's home would not be considered interruptions in foster care status. In the event the child returns home (for what is expected to be a permanent period), but is later returned to foster care, a new determination of eligibility based on circumstances at the time of that placement would be required. If the child leaves the foster home and is placed in a State training school for a temporary period, and the court order of removal is still in effect, he may retain his foster care status during the training school placement. A redetermination of eligibility would be required after the child returns to the foster care facility. Of course, Federal financial participation is allowed only during the time the child is in a licensed or approved foster care facility.

- **Source/Date:** ACYF-CB-PIQ-85-06 (6/5/85)
- **Legal and Related References:** Social Security Act - section 472

Question: During the time the child is receiving title IV-E foster care payments, the parental rights of his parents are terminated. The child is subsequently moved into a residential care facility which is not eligible to receive foster care payments and the title IV-E case is discontinued. Later, he is again placed into a foster home and re-application for title IV-E foster care is made. In considering eligibility for this re-application, the deprivation at the time of court action, found initially and verified under the old foster care case, can be utilized. However, to meet the requirement of "continues to be eligible", must deprivation with regard to the biological parents again be established or may the termination of parental rights be used to constitute deprivation?

Answer: If the child has not returned to his own home and has been continuously in a foster care status since removal from the home (whether or not the facility is eligible to receive payments under title IV-E), a redetermination of eligibility would be appropriate at the time he returned to a facility eligible for Federal financial participation (FFP).

A redetermination of the deprivation factor at that time would consist of a confirmation that the conditions at the time of removal from the home continued to exist or that termination of parental rights (TPR) had occurred. In the latter case, the TPR would, from that point and throughout this episode of foster care, become the reason for continuing eligibility in terms of the deprivation factor.

If, however, the child is not continuously in foster care status and returns to the home of a relative that is considered to be his own home, then a subsequent re-entry into the foster care system requires a new (initial) determination of all eligibility factors.

In such a situation, where the child was living in the home of another relative after termination of parental rights and was later removed from the home of that relative, deprivation would then be based upon the absence of the parent(s) from the home of the relative, rather than TPR. (See section 406(a) as in effect on July 16, 1996).

- **Source/Date:** ACYF-CB-PIQ-86-03 (5/9/86)
- **Legal and Related References:** Social Security Act - sections 406 (a) and 407 (as in effect on July 16, 1996)

8.3A.13 TITLE IV-E, Foster Care Maintenance Payments Program, Eligibility, Voluntary placement agreements

Question: If a State fails to obtain the necessary judicial determination within the first 180 days of a voluntary placement, can the case be reopened when a judicial hearing is convened or does the child lose all further benefits of the title IV-E program during that period of placement?

Answer: The case may not be reopened. The judicial determination must be made within the first 180 days of placement. Section 472 (e) of the Social Security Act states that no Federal payment may be made for a child removed from his or her home pursuant to a voluntary placement agreement and who remains in voluntary placement in excess of 180 days, unless there has been a judicial determination within the first 180 days of such placement to the effect that the placement is in the best interests of the child.

According to the legislative history, this provision was included in Public Law 96-272 in order to allow for short term emergency placements but provide the child with the protection of a court review if the placement became prolonged.

- **Source/Date:** ACYF-CB-PIQ-85-09 (10/10/85)
- **Legal and Related References:** Social Security Act - sections 472 (d) and (e)

Question: In the event that a court hearing date has been set within the first 180 days of a voluntary placement, but no determination made, may a pre-approved continuance hearing date deem the child eligible up to the continuance date?

Answer: No. Although the applicable title IV-E requirement at section 472 (e) is stated in terms of a judicial determination, it does not specifically require a court hearing. If the determination is not made within 180 days of placement, whether or not a hearing is held, Federal financial participation may not continue.

- **Source/Date:** ACYF-CB-PIQ-85-09 (10/10/85)
- **Legal and Related References:** Social Security Act - sections 472 (d) and (e)

Question: A State places a child into foster care pursuant to a voluntary placement agreement but does not have the voluntary placement provision in its State Plan and, thus, does not claim Federal financial participation (FFP) for the child. Can this placement later be considered a judicial removal and FFP be claimed from that time forward if there is a petition to the court within six months of the time the child had last been living with the parent(s) and subsequent judicial determinations are made regarding "contrary to the welfare" and "reasonable efforts"?

Answer: No. The statute allows FFP for otherwise eligible children who are removed from their homes either pursuant to a voluntary placement agreement or as the result of judicial determinations regarding "contrary to the welfare" and "reasonable efforts." It is a State option whether to claim FFP for voluntary placements. For a State to be eligible for Federal reimbursement for voluntary placements, it must meet the requirements of section 472 of the Social Security Act and must have such provision in its title IV-E State Plan. In States that accept voluntary placements, but do not meet the requirements for claiming FFP, such placements are ineligible for FFP during the entire stay in foster care. The fact that a petition is filed within six months of the removal and the required subsequent judicial determinations are obtained does not change the nature of the removal from voluntary to judicial.

If, however, a State revises its title IV-E State Plan and becomes eligible to claim FFP for voluntary placements, it may also begin to claim FFP for any eligible child who had previously been removed pursuant to a voluntary placement agreement if there had been a judicial determination regarding "best interests" within 180 days of the child's placement.

- **Source/Date:** ACYF-CB-PIQ-89-03 (7/24/89)
- **Legal and Related References:** Social Security Act - sections 472

Question: If a State, which is claiming Federal financial participation (FFP) for voluntarily placed children, misses the requirement for a judicial determination within 180 days of placement that such placement is in the best interests of the child, but petitions the court within the six-month timeframe set forth in section 472(a)(4)(B)(ii) of the Social Security Act, can the State consider this a judicial removal, once determinations are made concerning "contrary to the welfare" and "reasonable efforts"?

Answer: No. The State has been claiming FFP under the Federal voluntary placement program for 180 days. In this case, the State has failed to meet the requirement for continuing FFP that there must be a judicial determination within 180 days to the effect that the placement is in the best interests of the child. The fact that the State petitioned the court within six months of the time the child last resided with a relative and later obtained the judicial determinations required for judicial removals would not change the nature of that removal from voluntary to judicial.

- **Source/Date:** ACYF-CB-PIQ-89-03 (7/24/89)
- **Legal and Related References:** Social Security Act - sections 472; 45 CFR 1356.22

Question: May a State develop a voluntary placement agreement that would allow a parent to retain custody of his or her child and allow the State to claim Federal financial participation under the title IV-E foster care maintenance payments program on behalf of an otherwise eligible child?

Answer: Yes. As long as the State retains placement and care responsibility for the child, the fact that the voluntary placement agreement allows the parent to retain custody of the child does not impair the child's eligibility for title IV-E foster care maintenance payments. Placement and care responsibility means that the State agency is legally accountable for the day-to-day care and protection of the child in foster care. Responsibility for placement and care allows the State agency to make placement decisions about the child, such as where the child is placed and the type of placement most appropriate for the child.

The State's placement and care responsibilities under section 472(a)(2) of the Social Security Act must be unencumbered in order to claim Federal financial participation for title IV-E foster care costs. To the extent that a State's definition of custody contradicts or in any manner limits the agency's placement and care discretion, such children would not be eligible for title IV-E foster care maintenance payments.

- **Source/Date:** 06/09/04
- **Legal and Related References:** Section 472(f) of the Social Security Act, CWPM section 8.3A.12.

Question: Must the State hold six-month periodic reviews and permanency hearings for children on trial home visits?

Answer: Historically, this has been an area in which States have had some flexibility. If the State considered a child who is on a trial home visit to be "in foster care," then it was required to continue holding six-month periodic reviews and permanency hearings during that visit. If not, then the State was not required to hold such reviews or hearings. If the trial home visit ends within the six months allotted in the regulations at 45 CFR 1356.21 (e), then the foster care placement is considered continuous and the State should hold six-month periodic reviews and permanency hearings in accordance with the original schedule.

- **Source/Date:** Questions and Answers on the Final Rule (65 FR 4020) (1/25/00)
- **Legal and Related References:** Social Security Act - section 475 (5); 45 CFR 1356.21 (e)

PRIOR LIVING

8.3A.11 TITLE IV-E, Foster Care Maintenance Payments Program, Eligibility, Removal from the home

Question: We are confused by the term "constructive removal"? Please explain the term and its implications for the title IV-E program.

Answer: To be eligible for title IV-E funding, a child must, among other things, be removed from the home of a relative as the result of a voluntary placement agreement or a judicial determination that continuation in the home would be contrary to the child's welfare. The statute allows a six-month period of time during which the child can live with an interim caretaker, relative or non-relative, and still be eligible for title IV-E. Under prior policy, we interpreted the term "removal" to mean a physical removal. As a result, if the interim caretaker was a relative, and the State intended to remove custody from the parent but let the child remain with that interim caretaker relative, the child could not be eligible for title IV-E funding because the child was not physically removed from the home of a relative. This policy created a disincentive for relative placements. To remove this inequity between relative and non-relative caregivers, we now permit the removal of the child from the home, in this circumstance, to be a "constructive" (i.e., nonphysical, paper, or legal) removal.

We offer a summary of examples to clarify when a child would be eligible for title IV-E foster care pursuant to a constructive removal. These examples presume that the child is eligible for Aid to Families with Dependent Children (AFDC) in the home of the parent or other specified relative:

The child lived with either a related or non-related interim caretaker for less than six months prior to the State's petition to the court for removal of the child. The State licenses the home as a foster family home and the child continues to reside in that home in foster care. The child is eligible for title IV-E foster care since s/he lived with the parent within six months of the State's petition to the court, and was constructively removed from the parent (i.e., there was a paper removal of custody).

The child lived with either a related or non-related interim caretaker for more than six months prior to the State's petition to the court. The State licenses the home as a foster family home and the child remains in that home in foster care. The child is ineligible for title IV-E foster care since s/he had not lived with the parent within six months of the State's petition to the court, and was not removed from the home of a relative. (Although constructively removed, the child is ineligible for title IV-E because it had been more than six months since the child lived with the parent.)

The child lives with a related interim caretaker for seven months before the caretaker contacts the State to remove the child from his/her home. The agency petitions the court and the court removes the custody from the parents and physically removes the child from the home of the interim related caretaker. The child would not be eligible for title IV-E foster care since s/he had not lived with the parent or other specified relative from whom there was a constructive removal within six months of the initiation of court proceedings. (Although the child was physically removed from the home of the related interim caretaker, that removal cannot be used to determine title IV-E eligibility since the removal was not the result of a voluntary placement agreement or judicial determination, as required in section 472 (a)(1) of the Act. Moreover, the child is ineligible for title IV-E because it had been more than six months since the child lived with the parent from whom s/he was removed.)

The child lived with a non-related interim caretaker for seven months before the caretaker asks the State to remove the child from his/her home and place in foster care. The child is ineligible for title IV-E foster care because s/he had not lived with a parent or specified relative within six months of the petition.

The child is in a three-generation household in which the mother leaves the home. The grandmother contacts the State agency four months later and the agency petitions the court within six months of the date the child lived with the mother in the home. The State licenses the grandmother's home as a foster family home and the child continues to reside in the home in foster care. The child is eligible for title IV-E foster care since s/he lived with the parent within six months of the State's petition to the court, and was constructively removed from the parent's custody.

- **Source/Date:** Preamble to the Final Rule (65 FR 4020) (1/25/00)
- **Legal and Related References:** Social Security Act - section 472 (a)(1); 45 CFR 1356.21 (k) and (l)

Question: Can a child be considered "constructively" removed from a legal guardian who is not a specified relative?

Answer: No. The statute at section 472 (a)(4) of the Social Security Act requires, among other things, that a child be living with and removed from the home of a specified relative at the time of the voluntary placement agreement or initiation of court proceedings. The provisions for "constructive" removal do not alter the requirement that the removal be from the home of a parent or specified relative.

- **Source/Date:** Preamble to the Final Rule (65 FR 4020) (1/25/00)
- **Legal and Related References:** Social Security Act - sections 406 (a) and 407 (as in effect on July 16, 1996) and 472; 45 CFR 1356.21 (k)

Question: May a child born to a woman while she is a prison inmate or patient in a state hospital be considered eligible for foster care payments if all other title IV-E foster care requirements are met? It has been our interpretation that since the child could not return home with the mother and live with her because of her prisoner or patient status, the child would not be eligible to receive AFDC. Hence, such a child could not meet title IV-E foster care eligibility requirements.

Answer: An otherwise eligible child born to a woman who is a prison inmate or a patient in a hospital, and deprived of the support of an absent father, would be eligible for the title IV-E foster care program if removed from the "home of a relative" and placed in foster care in accordance with section 472 of the Social Security Act (the Act). This is true when the child is placed in foster care awaiting the mother's release or when parental rights are terminated directly after birth. The inability of the child to return to the mother during her prisoner or patient status (or for any other reason) has no bearing on the child's eligibility for title IV-E foster care.

Eligibility for the title IV-E foster care maintenance payments program as defined in section 472 (a) of the Act states that foster care payments may be made with respect to a child who "would meet the requirements of section 406 (a) or section 407 but for his removal from the home of a relative..." The controlling factor in establishing initial eligibility is the deprivation of parental support. Other requirements under title IV-E follow in sections 472 (a)(1) through (4). The child born to a mother who was a hospital patient or a prison inmate would be considered to be living with the mother at the time of birth, and if placed in foster care would be removed from the home of the relative (the mother) in accordance with section 472 (a). The definition of "home" at 45 CFR 233.90 (c)(1)(v)(B) is applicable to the hospital or prison setting.

- **Source/Date:** ACYF-CB-PIQ-86-03 (5/9/86)
- **Legal and Related References:** Social Security Act - sections 406 (a) and 407 (as in effect on July 16, 1996) and 472; 45 CFR 233.90 (c)(1)(v)(B) and 45 CFR 1356.21 (k)

Question: For the purpose of determining a child's eligibility for Aid to Families with Dependent Children (AFDC) at the time of the child's removal from his or her home, the child must have been living with and removed from the home of a specified relative. Who is considered a "specified relative" for this purpose?

Answer: A specified relative is defined as any relation by blood, marriage or adoption who is within the fifth degree of kinship to the dependent child. This includes great-great-grandparents and first cousins once removed (children of first cousins). Accordingly, for the purpose of determining title IV-E eligibility, any otherwise eligible child who is removed from the home of a relative who is within the fifth degree of kinship to the child will be eligible for assistance under title IV-E.

- **Source/Date:** ACYF-CB-IM-92-04 (2/24/92)
- **Legal and Related References:** 45 CFR 233.90 (c)(1)(v)

8.3C.2a TITLE IV-E, Foster Care Maintenance Payments Program, State Plan/Procedural Requirements, Case review system, date a child is considered to have entered foster care

Question: For the date the child is considered to have entered foster care, may the State use a date that is earlier than that prescribed in regulation?

Answer: The time frames for considering when a child has entered foster care, i.e., the earlier of a judicial finding of abuse or neglect or 60 days from the date the child is removed from the home, are statutory. However, nothing precludes a State from using a point in time that is earlier than that required by statute or regulation, such as the date the child is physically removed from the home. Clearly, if a State uses the date a child is physically removed from the home, the requirements for holding periodic reviews, permanency hearings, and complying with the termination of parental rights provision within the time frames prescribed would be satisfied.

- **Source/Date:** Preamble to the Final Rule (65 FR 4020) (1/25/00)
- **Legal and Related References:** Social Security Act - section 475 (5)(F); 45 CFR 1355.20, 1356.21 (b)(2) and 1356.22

Question: How does the date of entry into foster care apply to children who enter foster care pursuant to a voluntary placement agreement?

Answer: The statute makes no distinction with respect to the manner in which children enter foster care when setting the parameters for determining when a child is considered to have entered foster care. Therefore, children placed in foster care via a voluntary placement agreement will be considered to have entered foster care no later than 60 days after the child is removed from the home.

We want to take this opportunity, however, to note that the purpose of the 60-day limit at section 475 (5)(F) of the Social Security Act is to ensure that periodic reviews, permanency hearings, and application of the termination of parental rights (TPR) provision are not delayed as a result of contested involuntary removals. The danger of such a delay often does not exist when children are removed from their homes pursuant to a voluntary placement agreement. When children are removed from home via a voluntary placement agreement, we encourage States to use the date the child is placed in foster care (rather than 60 days later) as the date for calculating when to hold periodic reviews, permanency hearings, and for complying with the TPR provision.

- **Source/Date:** Preamble to the Final Rule (65 FR 4020) (1/25/00)
- **Legal and Related References:** Social Security Act - section 475 (5)(F); 45 CFR 1355.20, 1356.21 (b)(2) and 1356.22

Question: How should the State determine the date a child is considered to have entered foster care for a child who is voluntarily relinquished?

Answer: The date a child is considered to have entered foster care according to the statute is the earlier of a judicial finding of abuse or neglect or 60 days from the date the child was removed from the home. Typically, there is no finding of abuse or neglect in a voluntary relinquishment, so the date of entry into foster care would be no later than 60 days from the date the child was removed from the home.

- **Source/Date:** Preamble to the Final Rule (65 FR 4020) (1/25/00)
- **Legal and Related References:** Social Security Act - section 475 (5)(F); 45 CFR 1355.20, 1356.21 (b)(2) and 1356.22

Question: What is the connection between the date the child is considered to have entered foster care and when the State may claim Federal financial participation (FFP) for foster care maintenance payments?

Answer: Establishing initial eligibility for title IV-E funding and initial claiming for FFP have no relationship to the date the child is considered to have entered foster care defined at section 475 (5)(F) of the Social Security Act. The purpose of that provision is to set the "clock" for determining when to satisfy the requirements for holding periodic reviews, permanency hearings, and the termination of parental rights (TPR) provision. A child's initial eligibility for title IV-E funding is not related to this time frame.

The date a child is considered to have entered foster care is, however, related to maintaining a child's eligibility for title IV-E funding. Under section 1356.21 (b)(2), we require the State to use the date the child is considered to have entered foster care in determining when to obtain a judicial determination that it made reasonable efforts to finalize a permanency plan. We intentionally linked the timing for obtaining this judicial determination to the date the child is considered to have entered foster care so that such determinations could occur at the permanency hearing, the logical time for making such determinations.

- **Source/Date:** Preamble to the Final Rule (65 FR 4020) (1/25/00)
- **Legal and Related References:** Social Security Act - section 475 (5)(F); 45 CFR 1355.20, 1356.21 (b)(2) and 1356.22

Question: States often temporarily place children in facilities that are outside the scope of what is considered "foster care," such as a detention facility or psychiatric hospital, with the intent of moving the child to a foster care placement at a later date. What is the "date the child is considered to have entered foster care" (the date used to satisfy the case review requirements at section 475 (5) of the Social Security Act (the Act)) for such children?

Answer: If a child is initially placed in a facility that is not a foster family home or child-care institution, i.e., the child is not in "foster care," and remains in such facility for more than 60 days, the date such child is considered to have entered foster care is the day that child is placed in a foster family home or child-care institution. If however, the child's entry into foster care from such a setting occurs within 60 days of his or her removal from the home, States should determine the "clock" for satisfying the requirements of the case review system in accordance with section 475 (5)(F) of the Act, i.e., the earlier of a judicial finding of abuse or neglect or 60 days from the date of removal.

- **Source/Date:** Questions and Answers on the Final Rule (65 FR 4020) (1/25/00)
- **Legal and Related References:** Social Security Act - section 475 (5); 45 CFR 1355.20

ADOPTION ASSISTANCE

8.3A.2 TITLE IV-E, Foster Care Maintenance Payments Program, Eligibility, Age

Question: For what classes of title IV-E eligible children does title IV-E allow continuation of foster care maintenance payments after age 18 and reimbursements for those payments? May a State, for example, claim Federal financial participation (FFP) for children in foster care who have mental or physical handicaps who remain in care until age 21?

Answer: Under section 406 (a) of the Social Security Act (the Act) (as in effect on July 16, 1996) a dependent child is defined as one under the age of 18. This age limit applies to title IV-E foster care eligibility under section 472 of the Act. The only exception under section 406 (a) is (at State option) for those children who are over 18 and under the age of 19 and who are full time students expected to

complete their secondary schooling or equivalent training before reaching age 19. There is no provision under title IV-E which specifically allows payments on behalf of mentally or physically handicapped children in foster care who are age 18 or older. Therefore, no federal financial participation is available for such payment unless the requirements of 45 CFR 233.90 are met.

On the other hand, title IV-E adoption assistance (at State option) may be continued to age 21 with respect to a child with a mental or physical handicap.

- **Source/Date:** ACYF-CB-PIQ-85-05 (4/12/85)
- **Legal and Related References:** Social Security Act - sections 406 (a) (as in effect on July 16, 1996) and 472

8.4A TITLE IV-E, General Title IV-E Requirements, AFDC Eligibility

Question: Section 108 (d) of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) (as amended by the Balanced Budget Act of 1997, P.L. 105-33) links eligibility for Federal foster care and adoption assistance to the Aid to Families with Dependent Children (AFDC) program as it was in effect on July 16, 1996. Section 401(a) of PRWORA limits Federal public benefits to "qualified aliens." The term "qualified alien" was not defined or in use on July 16, 1996. How are States to apply these two provisions?

Answer: Alien children must be eligible for AFDC under a State's July 16, 1996 plan and must also meet the PRWORA definition of "qualified alien" to be eligible for Federal foster care maintenance or adoption assistance (except that children receiving adoption assistance pursuant to agreements signed before August 22, 1996 may continue to receive such assistance).

- **Source/Date:** ACYF-CB-PIQ-99-01 (1/14/99)
- **Legal and Related References:** Social Security Act - Title IV-E; The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PL 104-193)

8.2B.11 TITLE IV-E, Adoption Assistance Program, Eligibility, Special needs

Question: Please explain the requirements for special needs determinations.

Answer: An integral part of establishing adoption assistance eligibility requires the State to determine that the child is a child with special needs in accordance with all three criteria defined in section 473 (c) of the Social Security Act (the Act):

1) The State must determine that the child cannot or should not be returned to the home of his or her parents (section 473 (c)(1) of the Act); and 2) The State must determine that there exists a specific factor or condition because of which it is reasonable to conclude that the child cannot be placed with adoptive parents without providing title IV-E adoption assistance or title XIX medical assistance. Such a factor or condition may include (but is not limited to) ethnic background, age or membership in a minority or sibling group, the presence of a medical condition, or physical, mental or emotional disabilities. For example, in some States ethnic background alone may inhibit the ability of a child to be adopted, while in other States a combination of factors, such as minority status and age, may be factors. It is important to note that in each case the State must conclude that, because of a specified factor or factors, the particular child cannot be placed with adoptive parents without providing assistance; and 3) Finally, the State must determine that in each case a reasonable, but unsuccessful, effort to place the child with appropriate parents without providing adoption assistance has been made. Such an effort might include the use of adoption exchanges, referral to appropriate specialized adoption agencies, or other such activities. The only exception to this requirement is when it would not be in the best interests of the child

because of such factors as the existence of significant emotional ties with prospective adoptive parents while in the care of those parents as a foster child. The exception also extends to other circumstances that are not in the child's best interest, as well as adoption by a relative, in keeping with the statutory emphasis on the placement of children with relatives.

The State must document in each child's case record the specific factor(s) that make the child difficult to place and describe the efforts to place the child for adoption without providing assistance. In an effort to find an appropriate adoptive home for a child, and meet the requirement that a reasonable, but unsuccessful, effort be made to place the child without adoption assistance, it is not necessary for the agency to "shop" for a family while the child remains in foster care. Once the agency has determined that placement with a certain family is in the child's best interest, the agency should make full disclosure about the child's background, as well as known or potential problems. If the agency has determined that the child cannot or should not return home and the child meets the statutory definition of special needs with regard to specific factors or conditions, then the agency can pose the question of whether the prospective adoptive parents are willing to adopt without assistance. If they say they cannot adopt the child without adoption assistance, the requirement in section 473 (c)(2)(B) for a reasonable, but unsuccessful, effort to place the child without providing adoption assistance will be met.

- **Source/Date:** ACYF-CB-PA-01-01 (1/23/01)
- **Legal and Related References:** Social Security Act - sections 471(a)(19) and 473 (c)

8.2B.4 TITLE IV-E, Adoption Assistance Program, Eligibility, Deceased adoptive parents/dissolved adoptions

Question: Please explain the requirements regarding a child's eligibility for title IV-E adoption assistance when the adoptive parents die or the adoption is dissolved.

Answer: In the situation where a child is adopted and receives title IV-E adoption assistance, but the adoption later dissolves or the adoptive parents die, a child may continue to be eligible for title IV-E adoption assistance in a subsequent adoption. The only determination that must be made by the State prior to the finalization of the subsequent adoption is whether the child is a child with special needs, consistent with the requirements in section 473 (c) of the Act. Need and eligibility factors in sections 473 (a)(2)(A) and (B) of the Act must not be redetermined when such a child is subsequently adopted because the child is to be treated as though his or her circumstances are the same as those prior to his or her previous adoption. Since title IV-E adoption assistance eligibility need not be re-established in such subsequent adoptions, the manner of a child's removal from the adoptive home, including whether the child is voluntarily relinquished to an individual or private agency, is irrelevant.

- **Source/Date:** ACYF-CB-PA-01-01 (1/23/01)
- **Legal and Related References:** Social Security Act - section 473(a)(2) and 473(c)

8.2B.3 TITLE IV-E, Adoption Assistance Program, Eligibility, Child of a minor parent

Question: Is the child of a minor parent eligible for title IV-E adoption assistance?

Answer: Section 473 (a)(2) of the Social Security Act provides that the child whose costs in a foster family home or child-care institution are covered by the title IV-E foster care payment made with respect to the parent is eligible for adoption assistance under title IV-E, if determined by the State to be a child with special needs under section 473 (c).

- **Source/Date:** ACYF-CB-PA-88-01 (7/6/88); Questions and Answers on the Final Rule (65 FR 4020 (1/25/00))

- **Legal and Related References:** Social Security Act - section 473

8.2B.12 TITLE IV-E, Adoption Assistance Program, Eligibility, SSI

Question: Is there a prohibition under title IV-E against claiming Federal financial participation (FFP) for adoption assistance for a child who receives Supplemental Security Income (SSI)?

Answer: There is no prohibition under title IV-E against claiming FFP for adoption assistance for a child who receives benefits from SSI. Section 473 of title IV-E created an adoption assistance program which permits Federal matching funds for the costs of adoption assistance for the purpose of encouraging the placement of eligible children in adoptive homes. Under title IV-E adoption assistance (section 473), the scope of eligibility specifically includes children with special needs who are eligible to receive SSI (473 (a)(2)(A)(ii)) as well as those eligible for AFDC (473 (a)(2)(A)(i)) and title IV-E foster care (473 (a)(2)(A)(iii)).

Title XVI (SSI) is a needs based program and, as such, requires a test of income and resources of the adoptive parents in determining the amount of the SSI benefit to which a child with a disability(ies) may be entitled. If (or when) the parental resources and income exceed a maximum level determined by the SSI program, the child is no longer eligible for SSI payments.

If the adoptive parents decide to decline adoption assistance and choose to receive only SSI for the child, and if they have not executed an adoption assistance agreement before the adoption is finalized, they may not later receive title IV-E adoption assistance payments, as the child would no longer meet all of the eligibility requirements as a child with special needs (section 473 (c)(2)). It may be prudent for the decision maker (parent, guardian, custodian, caretaker relative) to arrange for an adoption assistance agreement which does not provide for payment, but which does provide for title XVI and title XIX coverage, and which may at some future date, upon review, be renegotiated to provide for payment of adoption assistance funds.

The adoptive parents of a child eligible for title IV-E adoption assistance and SSI benefits may make application for both programs and the child, if eligible, may benefit from both programs simultaneously. In cases where the child is eligible for both SSI and title IV-E and there is concurrent receipt of payments from both programs, "the child's SSI payment will be reduced dollar for dollar without application of any exclusion", thus decreasing the SSI benefit by the amount of the title IV-E payment (SSI Program Operations Manual). To reiterate, concurrent receipt is subject to the SSI rule that the SSI payment will be reduced by the amount of the foster care payment.

- **Source/Date:** ACYF-CB-PA-94-02 (2/4/94)
- **Legal and Related References:** Social Security Act - section 473; 20 CFR 416.1100ff; Program Operations Manual System, Part 5, Supplemental Security Income Chapter 008 - Income, Subchapter 30 - Unearned Income

8.4A TITLE IV-E, General Title IV-E Requirements, AFDC Eligibility

Question: How does the State agency determine need and deprivation to establish a child's eligibility for title IV-E adoption assistance?

Answer: If a child's eligibility for title IV-E adoption assistance is based upon his or her eligibility for Aid to Families with Dependent Children (AFDC) as a dependent child, the State must determine that the child would have been AFDC-eligible in the home from which s/he was removed. To meet the AFDC criteria, the child must be both a needy child and a child who is deprived of parental support or whose principal wage earner parent is unemployed. Need exists in the child's home if the resources

available to the family are below \$10,000. Deprivation exists in the home in situations where there is death of a parent, an absent parent, or a parent with a mental or physical incapacity to the extent that the parent cannot support or care for the child. At the point of the removal of a child from his or her home, a termination of parental rights (TPR) alone is not proof that deprivation exists. The factors noted here must be established based on the circumstances in that home. In addition, the child must meet the need and deprivation requirements at the time of the adoption petition. Once a child is in foster care, need is based upon the resources available to the child. Hence, the resources available to the child must be below the \$10,000 limit at the time of the adoption petition. After a child has been determined deprived in the home from which s/he is removed, a TPR can serve as proof of deprivation at the time of the petition.

- **Source/Date:** ACYF-CB-PA-01-01 (1/23/01)
- **Legal and Related References:** Social Security Act - sections 472 (a) and 473 (a)(2)

8.2B.7 TITLE IV-E, Adoption Assistance Program, Eligibility, Judicial determinations

Question: We believe that the lack of a "reasonable efforts" determination in accordance with section 472 (a)(1) of the Social Security Act (the Act) cannot result in ineligibility for title IV-E adoption assistance. Is this correct?

Answer: Yes. The judicial determination of "reasonable efforts" to prevent placement and reunify the child with his family is an eligibility requirement for the title IV-E foster care maintenance payments program (section 472 (a)(1) of the Act), but such a determination is not an eligibility requirement for adoption assistance in section 473 of the Act.

- **Source/Date:** ACYF-CB-PIQ-85-06 (6/5/85)
- **Legal and Related References:** Social Security Act - sections 472 and 473

Question: Do the "contrary to the welfare" requirements at 45 CFR 1356.21(c) and (d) apply to the adoption assistance program?

Answer: Yes. To fulfill the eligibility criteria in section 473 (a)(2)(A)(i) of the Social Security Act when a child's removal from the home is the result of court action, there must be a judicial determination to the effect that to remain in the home would be contrary to the child's welfare. Since a child's removal from the home must occur as a result of such a judicial determination, the determination must be made in the first court ruling that sanctions (even temporarily) the removal of a child from the home. If the determination is not made in the first court ruling pertaining to removal from the home, the child is not eligible for title IV-E adoption assistance. The contrary to the welfare finding must be explicit and made on a case-by-case basis. Items such as nunc pro tunc orders, affidavits, and bench notes are not acceptable substitutes for a court order. Only an official transcript is sufficient evidence of the judicial determination. A judicial determination regarding reasonable efforts to prevent removal or reunify the family, although required for title IV-E foster care, is not a requirement for title IV-E adoption assistance eligibility.

- **Source/Date:** ACYF-CB-PA-01-01 (1/23/01)
- **Legal and Related References:** Social Security Act - section 473 (a)(2); 45 CFR 1356.21(c) and (d)